Benfield Electric Co., Inc. *and* International Brotherhood of Electrical Workers, Local 24, AFL–CIO.

Cases 5–CA–23367, 5–CA–24393, and 5–CA–4932

June 30, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On July 12, 1996, Administrative Law Judge William F. Jacobs issued the attached decision. The Respondent filed exceptions, a supporting brief, and a brief in reply to the General Counsel's answering brief; the General Counsel filed exceptions and an answering brief to the Respondent's exception; and International Brotherhood of Electrical Workers (IBEW) filed a brief, amicus curiae.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions only to the extent consistent with this Decision and Order.

1. The judge found, inter alia, that the General Counsel appropriately reinstated the charge in Case 5–CA–23367 outside the 6-month limitations period of Section 10(b) of the Act because the Respondent fraudulently concealed material facts from the General Counsel. We find merit in the Respondent's exceptions to this finding.

On March 3, 1993,[3] the Union filed a charge alleging, inter alia, that the Respondent violated Section 8(a)(3) of the Act by refusing to hire certain applicants because of their membership in the Union. On May 4, the Board agent investigating the charge interviewed the Respondent's president, Charles Benfield, and its vice president, Barry Burnick. Thereafter, by letter to the Board agent dated May 10, the Respondent's attorney summarized the Respondent's position concerning the Union's charge. Specifically, the May 10 letter asserted that during the relevant period, i.e., from November 1992 through March 1993, the Respondent received many more applications than it had positions available, and consequently many of the applications were summarily rejected based on several criteria. For instance, applications that were incomplete were summarily discarded. In addition, applications were similarly rejected if any of the following factors were present:

> 1. The application did not indicate the position the person was applying for.
>
> 2. The application did not include a copy of the applicant's driver's license or social security card.
>
> 3. The application did not include a specific wage rate sought by the applicant.
>
> 4. The applicant indicated a wage rate substantially higher than what the Respondent intended to pay.
>
> 5. The applicant's employment history showed that the applicant earned a wage substantially higher than what the Respondent intended to pay.
>
> 6. The applicant's employment history indicated short-term employment with previous employers.

The May 10 letter asserted that each of the named discriminatees were rejected because one or more of the above factors were present. The letter also asserted:

> Plainly there is no evidence to support the allegation that any or all of the Charging Parties were rejected because of anti-union animus on the part of Benfield. Indeed, there is no evidence that Benfield has any anti-union animus. There is no evidence that Benfield has ever rejected any applicant because of prior union activity or affiliation. As Mr. Benfield indicated at our meeting, he is unaware of whether or not any of his employees were former union members or whether or not they are union supporters. Also, as Mr. Benfield indicated, in reviewing the Charging Parties' applications, he never looked at the sections which may have indicated affiliation with the IBEW.

During the investigation of this charge, the Respondent made available to the General Counsel 145 applications received from November 1992 through March 1993, including 45 applications from individuals that were hired during this period.

By letter dated July 16, 1993, the Regional Director dismissed the charge. The dismissal letter states, in relevant part:

> The investigation failed to establish sufficient evidence to demonstrate a nexus between the applicants' union membership and/or activities and the Employer's failure to hire them. There is no direct evidence of anti-union animus on the part of the Employer. Furthermore, under *Wireways, Inc.*, 309 NLRB [245] (1992), the Employer does not violate the Act when it rejects applicants because the wage rates sought, or previously earned, by the applicants exceeded wages the Employer was offering. Accordingly, further proceedings are not warranted, and I am refusing to issue complaint in this matter.

The Union filed a subsequent refusal-to-hire charge against the Respondent in May 1994 (Case 5–CA–24393). During the investigation of that charge, several witnesses came forward to the General Counsel with information concerning the Respondent's hiring practices since 1992. Specifically, these witnesses informed the Region that the

[1] We grant the IBEW's motion for leave to file its brief amicus curiae.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] All dates are in 1993 unless otherwise stated.

Respondent's hiring practices precluded hiring any applicant suspected of being a union member. The most significant witness, former Service Manager Donald Ruleman, testified that—contrary to the Respondent's stated position in May 1993—there were no rules or particular reasons in effect for discarding applications or ruling out applicants, other than suspected union membership. According to Ruleman, applicants were often identified as union applicants by, among other things, their high wage history and their prior employers.[4] Ruleman observed Charles Benfield and Barry Burnick go through the applications and put aside those that they suspected were from union members. In addition, Ruleman heard Patricia Benfield, who succeeded Charles Benfield as the Respondent's president in 1993, state that as long as she was there, there would never be a union at Benfield Electric.

Thereafter, the Region revoked the dismissal of the charge in Case 5–CA–23367 and on October 27, 1994, issued a complaint based on the refusal-to-hire allegations contained in that charge.

The judge found that the dismissed charge was properly reinstated and that the Respondent violated Section 8(a)(3) of the Act by refusing to consider for employment and refusing to hire certain applicants because of their union membership or their support for the Union. Crediting the General Counsel's witnesses, the judge found that the Respondent sought to conceal its discriminatory hiring practice from the General Counsel by fraudulently asserting in its May 10 position paper that the Respondent's hiring decisions were based on legitimate economic objectives.

Contrary to the judge, we find that the Respondent's conduct does not rise to the level of fraudulent concealment, and thus the reinstatement of the dismissed charge outside the 10(b) period was not proper.

The Board has held that three critical elements must be present in order to toll the 10(b) limitations period. Those elements are (1) deliberate concealment has occurred; (2) material facts were the object of concealment; and (3) the injured party was ignorant of those facts. E.g., *Brown & Sharpe Mfg. Co.*, 321 NLRB 924 (1996). We find that the critical first element has not been established here. First, there is no contention or showing that the Respondent deliberately concealed documents or witnesses from the General Counsel.[5] Further, the May 10 position paper, which the judge relied on to establish that the Respondent's conduct was fraudulent, was an attempt by the Respondent's attorney to advocate his client's position, i.e., that the Respondent had engaged in no wrongdoing. As in most cases alleging discrimination, the Respondent here denied the misconduct alleged and proffered an explanation for not hiring the named individuals, thus requiring the General Counsel to decide if the evidence presented in the investigation was sufficient to sustain the Charging Party's position. The denial of misconduct by a respondent, however, is not dispositive of the charge, nor is it an act of concealment. *Brown & Sharpe*, supra.

There is no evidence that the criteria set forth in the May 10 position paper were manufactured by the Respondent in response to the General Counsel's investigation. Indeed, consistent with Ruleman's testimony, most of those criteria could have been used by the Respondent as a means of screening out those applicants suspected of being a member of the Union. Further, although the testimony of Ruleman and others established that the Respondent had an unlawful motive in reviewing those applications, that testimony did not establish that the Respondent concealed documentary evidence. Similarly, the testimony did not suggest that the Respondent deliberately concealed witnesses from the General Counsel, or misled the General Counsel about the existence of such witnesses. In short, while it is clear that the Respondent was not forthcoming about its true motive, the record fails to establish any effort to conceal material facts from the General Counsel during the investigation. Accordingly, the first critical element of fraudulent concealment has not been established.

In arguing that the Respondent's May 10 position paper constitutes fraudulent concealment, the General Counsel relies on *Kanakis Co.*, 293 NLRB 435 (1989). We find that case distinguishable. In that case, the respondent's president and owner submitted to the Board agent conducting the investigation a sworn affidavit stating that the alleged discriminatee was laid off for specific economic reasons. Thereafter, in an unrelated criminal proceeding, the respondent's president testified that he had lied in his affidavit to the Board and had actually laid off the discriminatee at the request of the union's business agent. The Board found that the respondent's president perpetrated a fraud on the Board by giving perjured testimony concerning the central operative facts being investigated. The Board added that such conduct demonstrated contempt for the Board's processes that cannot be condoned, and accordingly warranted tolling the 10(b) period. 293 NLRB at 436.

In the instant case, the Respondent did not offer perjured sworn testimony to the Board agent conducting the investigation; it submitted a position statement from its attorney. While the Respondent's contentions here concerning its true motive were ultimately found not credible after a full presentation of all the evidence before the judge, such advocacy does not constitute the contempt for the Board's processes that was found in *Kanakis*, where the respon-

[4] Ruleman testified that it was common knowledge in the industry which employers were union employers, but to the extent that it was unknown whether an employer was a union employer, the applicant's high wage rates suggested union membership.

[5] After the dismissal of the charge was revoked, the Respondent turned over to the General Counsel an additional 14 applications of individuals hired during the relevant period. The Respondent maintains that these applications were inadvertently omitted from the 145 applications it submitted during the original investigation. The General Counsel does not contend, nor is there any evidence showing, that these applications were deliberately concealed from the Board agent conducting the investigation.

dent's president *admittedly* lied to the Board agent during the investigation. If, as the General Counsel urges, we were to find no significant difference between the May 10 position paper from the Respondent's attorney and the perjured affidavit in *Kanakis*, future respondents and their attorneys could very well be discouraged from submitting statements of position to the Board for fear that any denial of an allegation could cause a fraudulent concealment finding and the tolling of the 10(b) limitations period.

In sum, we find that the General Counsel has failed to show that the Respondent fraudulently concealed evidence in Case 5–CA–23367, and thus there was no basis for revoking the dismissal of the charge and issuing a complaint outside the 10(b) period. Accordingly, we shall dismiss the complaint in that case.[6]

2. The judge also found, in Cases 5–CA–24393 and 5–CA–24932, that the Respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider for employment and refusing to hire certain individuals in the latter part of 1993 and in 1994 because they were suspected union members or supporters. On May 11, 2000, the Board issued its decision in *FES*, 331 NLRB No. 20, setting forth the framework for analysis of refusal-to-hire and refusal-to-consider violations. We have decided to remand Cases 5–CA–24393 and 5–CA–24932 to the judge for further consideration in light of *FES,* including, if necessary, reopening the record to obtain evidence required to decide the case under the *FES* framework.

ORDER

The complaint in Case 5–CA–23367 is dismissed.

IT IS FURTHER ORDERED that the proceeding in Cases 5–CA–24393 and 5–CA–24932 is remanded to the administrative law judge for appropriate action as noted above. The judge shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order, as appropriate on remand. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Angela S. Anderson, Esq., for the General Counsel.
Jeffrey Rockman, Esq. (Astroth, Serotte, Rockman & Westcott), of Baltimore, Maryland, for the Respondent.
John S. Singleton, Esq. (Gendler, Berg & Singleton), of Baltimore, Maryland, for the Charging Party.

[6] Member Liebman concurs that the May 10 statement of position submitted by Respondent's counsel is not sufficient to toll the 10(b) period under the doctrine of fraudulent concealment. Nonetheless, she agrees with the position advanced by the IBEW that "[t]his case provides a rare insight into how *Wireways, Inc.*, 309 NLRB 245 (1992), has undermined the enforcement of the Act in the construction industry." (Brief amicus curiae at 2.) In many cases, application of *Wireways* will result, as it did initially in this case, in the dismissal of the unfair labor practice charges. She therefore believes that a reexamination of *Wireways* is warranted, either at a later stage of this case, if necessary to its resolution, or in another case.

DECISION

STATEMENT OF THE CASE

WILLIAM F. JACOBS, Administrative Law Judge. The charge in Case 5–CA–23367[1] was filed on March 9, 1993, by International Brotherhood of Electrical Workers, Local 24, AFL–CIO (the Union or Local 24). The charge alleged, inter alia, that Benfield Electric Company (the Respondent, the Company, or the Employer), since December 1, 1992, refused to hire Christopher Bell, Edward Hughes, Nathan Love, Mark DeJuliis, Michael McHale, Gary Griffin, Benny Shaw, Ivan Anderson, Henry Jefferson, Michael Dixon, and Carmen Voso because of their membership in and activities on behalf of the Union.

On July 16, 1993, the Regional Director dismissed the charge with the following explanation:

> As a result of the investigation it appears there is insufficient evidence to establish that the Employer violated Section 8(a)(1) and (3) of the Act by refusing to hire individuals named in the instant charge. The charge alleges that these individuals were not hired because of their membership in and activities on behalf of the International Brotherhood of Electrical Workers, Local 24, AFL–CIO. The investigation established that the Employer rejected applicants who did not completely fill out the application, who failed to list a specific salary desired; who listed a wage rate substantially higher than the Employer intended to pay; who had a prior wage rate substantially higher than the wage rate the Employer intended to pay; or whose length of service with prior employers was short term. The investigation failed to establish sufficient evidence to demonstrate a nexus between the applicants' union membership and/or activities and the Employer's failure to hire them. There is no direct evidence of anti-union animus on the part of the Employer. Furthermore, under *Wireways, Inc.,* 309 NLRB [245] (1992), the Employer does not violate the Act when it rejects applicants because the wage rates sought, or previously earned, by the applicants exceeded wages the Employer was offering. Accordingly, further proceedings are not warranted, and I am refusing to issue complaint in this matter.

The dismissal was subsequently revoked, however, and complaint issued on October 27, 1994,[2] based on the original March 9, 1993 charge. In the complaint, it is alleged that the revocation was due to Respondent's fraudulent concealment of its policy and practice of not considering for hire and not hiring individuals who are known or suspected union members and supporters. Respondent filed an answer on November 4, 1994.

On November 17, 1994, Respondent filed a Motion for Summary Judgment. On December 6, 1994, counsel for the General Counsel filed a response to Respondent's Motion for Summary Judgment and on December 9, Respondent filed a reply. On January 3, 1995, the Board issued an Order Denying Motion, finding that Respondent's motion raises genuine issues of material fact, which would best be resolved after a hearing before an administrative law judge.

The charge in Case 5–CA–24393 was filed May 6, 1994. An order consolidating cases, complaint and notice of hearing issued November 28, 1994, consolidating Case 5–CA–23367 with Case 5–CA–24393.

[1] The original charge was amended on April 21, 1995, to conform it to the complaint, which had added additional alleged discriminatees.

[2] Amended May 5, 1995.

The complaint in Case 5–CA–24393 alleges discriminatory refusals to hire Mark DeJuliis on October 7, 1993; Devereaux Bressler, Mark DeJuliis, Gary Griffin, Eric Halling, Stephen Walthrup, George Woods, and Donald Wright on November 18, 1993; and William Day, Mark DeJuliis, Phillip Kovalevski, Charles McNeal, and Gary Prestianni on December 2, 1993. The order consolidating cases, complaint and notice of hearing, which issued November 28, 1994, was amended April 11, 1995, to add an 8(a)(1) allegation.

The charge in Case 5–CA–24932 was filed by the Union against Respondent on December 2, 1994. Complaint issued based on this charge on March 31, 1995, along with an Order Consolidating Cases. It alleges discriminatory refusals to hire Kevin Bilbo, Frank Cookerly, Mark DeJuliis, Henry Duke, Joseph Mills, and George Joseph Woods on July 15, 1994; John Cupp on July 18 and 19, 1994; and Roderick Easter on August 23, 1994.

At the hearing, tried before me on May 22–25, and 31, and June 1 and 13–15, 1995, the General Counsel moved to amend the consolidated complaints to add the specific names of alleged discriminatees previously identified in the complaints only as "others similarly situated who are unknown to the undersigned." The individuals added as alleged discriminatees at the hearing were those whose names first became known to the General Counsel, on that date, pursuant to subpoena. The following are the names and dates of their applications:

Todd Emory	October 12, 1992
Michael Murtagh	November 2, 1992
Daniel Clary	October 5, 1992
Richard Meehan	November 3, 1992
Thomas Pyles	November 10, 1992
John Lusco	November 19, 1992
Chris Lusco	November 19, 1992
John Loman	December 3, 1992
Daniel Hicks	December 14, 1992
Robert Clay	December 14, 1992
Eric Gerczak	December 16, 1992
George Huebner	January 5, 1993
Darryl Pate	February 5, 1993
Larry Lee	February 18, 1993
Jesse Pritchard	February 2, 1993
James Morton	July 5, 1994
Carl Elk	August 25, 1993
Anthony White	February 25, 1993
Hans Have	February 19, 1993
Darren Rose	October 13, 1992
Norman Swoboda	March 1, 1993
Roy Kistner	February 3, 1993 & September 16, 1992
Roy Hill	February 4, 1993

All parties were represented at the hearing and were afforded full opportunity to be heard and present evidence and argument. All parties filed briefs. On the entire record,[3] my observation of the demeanor of the witnesses, and after giving due consideration to the briefs, I make the following

[3] The General Counsel's motion to correct transcript, unopposed, is granted.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Respondent

Respondent is an electrical contractor with its headquarters located in Forest Hill, Maryland, where it has both a residential and a commercial division. It also has other locations including facilities in Elkridge, Maryland, and in Virginia. The Respondent has several divisions including residential, commercial, service, and utility. The Elkridge division does only residential work, mostly in the southern and western Maryland counties. The residential division does single family homes, town homes, and residential condominiums, buildings of four floors or fewer. The commercial division wires commercial buildings, highrises, and industrial locations. The service division does small jobs too small for other divisions. The Company, which has been in existence for about 25 years, currently employs about 120 electricians.

B. Management

Charles Benfield was president of the Company until January 1993 at which time, his wife, Patricia Benfield, became president. She had been secretary/treasurer and comptroller. It is admitted that both have been supervisors and agents of the Company during all relevant periods. After Patricia became president of the Company, she also became the majority stockholder. Benfield then became a minority stockholder and has since remained with the Company as a consultant/member of management.

Historically, whenever Respondent was hiring electricians, Charles Benfield would first review the applications at the Forest Hill location. After Benfield's initial screening, those that passed would be sent to the managers of the various divisions. The applicants would then be contacted for interview and a final decision made on whether or not to hire him. Executive Vice President Alan Simon does the initial review of applications at the Elkridge location.

Benfield testified that applications are received throughout the year, regardless of whether or not Respondent is hiring at the time. The applications are kept on file indefinitely but are considered stale after 14 days and no longer usually given consideration thereafter.

C. Case 5–CA–23367

In November 1992, Respondent contracted to perform the electrical work at a new construction project located at the Francis Scott Key Medical Center in Baltimore. In order to do the job, Respondent had to hire 25 more commercial electricians to supplement its own complement. The job was expected to last from 6 to 8 months.

Benfield testified that Respondent's usual practice, when hiring, is to inquire of its own supervisory staff, if they are aware of any good electricians currently looking for work. Similar recommendations are sought from other contractors with whom Respondent is familiar. The purpose of this approach is to increase

the probability of obtaining competent employees with a known record.

In order to help fill the requirements necessitated by the Francis Scott Key job, Respondent, between October 1992 and March 1993, obtained from other contractors over 15 commercial electrician referrals who were hired.

In seeking to fill its requirements for the Francis Scott Key project in the fall of 1992, Respondent followed its usual practice. After hiring all the referrals available, it advertised in the newspapers for additional commercial electricians, apprentices, and helpers. Advertisements were placed in the Baltimore Sun and Hartford County Aegis on various dates from September 1992 to February 1993. Respondent received over 200 applications for the 25 electricians' jobs and hundreds more for other positions.

When Benfield screened the applications, he would typically discard those that did not meet the criteria established by the Company. In particular, according to Benfield, he would check each application to determine the experience of the applicant, the completeness of the application, the wage rate sought, the wage history of the applicant, and the stability of the applicant's employment history.

More specifically, Benfield testified, if an applicant noted a desired wage rate substantially above the wage rate being paid by Respondent, $10 to $13, for example $18 to $20, the application would be rejected. Benfield explained that, in his experience, applicants who note a desired wage of $18 or $20, but would accept a wage of $10 to $13, would leave as soon as a higher paying job becomes available.

Similarly, if an applicant noted a desired wage, comparable to that offered by the Company, but his wage history indicated that he had historically received a much higher wage, his application would be rejected as well. Benfield explained that, in his experience, in this situation too, the applicant would usually leave to obtain a higher paying wage such as he was used to earning.

In reviewing applications for the purpose of checking on the stability of an applicant's work history, Benfield testified that he is most interested in determining if the applicant stayed with previous employers for long periods of time. According to Benfield, if by analyzing the application, he determined that an applicant's work history reflected that he regularly changed jobs, he would probably do the same with Respondent. The implication is that the applicant would make an unstable and therefore an undesirable employee.

Benfield testified that he generally rejected any applications which were not completely filled out, especially if the information on the first page, the wages desired, was missing, because that left it to the Respondent to speculate as to what wages would be satisfactory to the applicant. Where this information was missing, the applicant would not be considered further.

The number of responses to Respondent's advertisements during the fall and winter of 1992 exceeded by far the requirements of Respondent. For this reason, Benfield admitted, he felt free to reject any applications, which were not completely executed. If any space was left blank on the first page, and the application rejected on that account, Benfield testified, he would not bother to look at the second page.

Finally, Benfield testified, the timing of the application was an important factor. Thus, applications are actively considered only for 14 days. If there is no opening when the application is filed, the application is not kept for more than 14 days to be considered for openings, which might occur subsequent to that period.

Respondent contends that each one of the alleged discriminatees named in the complaint in Case 5–CA–23367, as consolidated with the other cases, was rejected because he failed to meet one or more of the "criteria" discussed immediately above. Thus, according to Respondent:

1. *Edward Hughes* was never actually accepted or rejected because he never filed an application with Respondent.

As noted above, the complaint in Case 5–CA–23367 was amended on May 5, 1995, to add Edward Hughes to the list of alleged discriminatees. Specifically, it alleges that on or about October 21, 1992,[4] Respondent informed Hughes that it was not hiring electricians and thereby discouraged him from submitting an application for employment, at a time when Respondent was advertising for and hiring electricians. The amendment further alleges that the Respondent's act of discouraging Hughes from submitting an application was pursuant to its policy and practice of not hiring individuals who are known or suspected union members or supporters. In its answer, Respondent denied the allegation without explanation.

Record evidence indicates that Hughes is a journeyman electrician and has been a member of the Union for about 30 years. Though he was never an officer in the Union or a paid employee of the Union, from 1968 to 1981 he taught part time for the joint apprenticeship training committee (JATC), a committee composed of an equal number of members of the National Electrical Contractors Association (NECA) and the Union. Hughes has a master electrician's license and is a licensed electrical contractor in Baltimore County, Maryland.

Between September 1992 and February 1993, Respondent ran a series of want ads in the Baltimore Sun for commercial electricians, listing benefits and its Forrest Hill address as the place to apply. Wages were not mentioned. Hughes noticed one of these ads and during the week of October 20 went to Respondent's office to inquire about employment. He was by himself and was wearing a baseball cap that had "Local 24, IBEW" printed on it and a shirt with "Local 24, Electricians" printed on it. He asked the receptionist for an application because he had seen the ad in the newspaper. The receptionist told him that all the jobs were filled and they weren't accepting applications. Hughes left.

Despite the receptionist's statement, Respondent continued to run its want ads in the newspapers for electricians for the next 3-1/2 months. At least four applications were distributed in October, one before Hughes' visit to Respondent's office and three thereafter, resulting in the hiring of four applicants. Applicant Kevin Greenfield filed his application on October 22, was called by Respondent and interviewed on November 9, and started work on November 12. Greenfield was hired despite filling in the salary desired space with the word "Negotiable."

In keeping with the analyses and conclusions infra, I find that Hughes was recognized as a prounion applicant by virtue of his clothing and, in accordance with instructions from management, detailed infra, was discouraged by the receptionist from filing an application, in violation of the Act.

2. *Christian Bell* filed an application on October 21. He failed to note the specific salary he desired and wrote "neg" instead. His wage history indicated that he had recently earned $20 per hour on one job. Between 1977 and 1990, Bell was self-employed. As such, Benfield testified he was considered a competitor of Respondent and therefore not acceptable as an employee. In his experience, Benfield noted individuals who once had their own

[4] All dates are in 1992 unless noted otherwise.

companies and were later hired by Benfield would usually leave his employ and go back into business for themselves. Bell's application listed two unionized companies, Enterprise Electric Company and Brown and Heim Electric Company, as previous employers. Bell was rejected as an applicant.

Record evidence indicates that Christian Bell, an electrician, has been a member of the Union for 30 years. In October 1992, Bell was out of work and when he was told about Respondent's newspaper ad by a union official he went to the Forrest Hill office to file an employment application. He went there by himself and was wearing a Local 24 hat at the time. The truck he drove to Respondent's office had a Local 24 sticker on it and an IBEW decal on its rear window.

Bell asked the receptionist for an application and was given one but no instructions on how to fill it out. He asked if it would be all right to mail it in and was told that it would be. He was not asked for a copy of his driver's license or social security card. He left.

A few days later, Bell mailed in his application dated October 21. Where the application asked for "Salary Desired," Bell admitted writing in "Neg." He testified that he did so because he needed a job and was willing to negotiate on the wages but had he been instructed not to write in "negotiable" or told that his application would be rejected if he did so, he would not have done as he did.

The employment history portion of Bells' application included among his previous employers the names of Enterprise Electric Co., Brown & Heim and Noone Electric, all well-known union electric contractors. The wages earned at these previous employers ranged between $14.50 and $20.55 per hour. During one period, from 1977 to 1990, Bell listed himself as Bell & Sons, meaning he was self-employed. In a later position paper dated May 10, 1993, Respondent would claim that it rejected Bell's application, in part, because Bell was considered a competitor during his period of self-employment. Although Bell made several calls to Respondent to check up on the status of his application during November 1992, he was never interviewed or called.

For reasons explicated infra, I find that Bell was identified both by his appearance and application as a union applicant and rejected for employment for that reason.

3. *Mark DeJuliis* filed an application on November 12. He was rejected, Benfield testified, because he did not list a salary desired but noted "shop rate" instead that he had an employment history showing that he had earned $20 per hour at three of his last four employers and he worked for each of them for only 2 to 4 months.

The record indicates that DeJuliis is an electrician who has been a member of the Union for 15 years. He went through the JATC program and has master electrician's licenses in Maryland and Georgia. DeJuliis applied for employment with Respondent on five separate occasions. The first time was on November 12 when he saw Respondent's ad in the newspaper and drove alone to the Forrest Hill office wearing his union hat and jacket and driving his van with signs on both sides which read, "Union, yes." Once in the office, the receptionist, Debbie Thompson, gave him an application, which he filled out and returned to her without receiving instructions on how to fill it out. When he wrote "shop rate" in the "Salary Desired" blank he was not informed that his application would be automatically rejected because he did not enter a specific sum. Debbie told DeJuliis that Respondent kept the applications for a year. For reasons stated, infra, I find that DeJuliis was identified and rejected because he was a union applicant.

4. *Nathan Love* filed an application on November 6. Benfield testified that he rejected Love's application because he failed to list the salary he desired and instead wrote in "negotiable" and because his employment wage history showed he earned approximately $20 per hour in his past employment.

The record reflects that Nathan Love is an electrician and has been a member of the Union for 15 years. He served his apprenticeship with JATC for 4 years. In November 1992, Love was unemployed and when he heard that Respondent had been advertising for electricians, he decided to apply.

On November 6, he and Michael McHale went to Respondent's Forest Hill office. Love wore a union jacket. They were given applications but no instructions on how to fill them out. Consequently, since he did not know what Respondent was paying and no one told him to put in an exact figure, he wrote "negotiable" in the space entitled "Salary Desired."

After submitting his application, he heard nothing from Respondent. He called six times in the next 4 or 5 months and each time spoke with Debbie Thompson. He mentioned that Respondent was still running ads and reminded her, each time, who he was and that he was still available for employment. In reply, each time Debbie would give a different answer to his inquiry, e.g., that Respondent was not hiring or that it was stockpiling applications. However, she never mentioned that his application was incomplete. In the meantime, Respondent contacted and interviewed other applicants but none that had indicated a union affiliation. Love had listed previous union employers, namely, Brown & Heim, Neutron Electrical Contractors, Dynelectrical and the J.P. Electrical Company. He also listed his wages at these employers as about $20 per hour. Under educational background he included the Union's apprenticeship program.

As explained below, I find that Love was identified as a union applicant and rejected for employment for that reason.

5. *Michael McHale* filed an application on November 6. Benfield testified that he rejected McHale because he wrote "negotiable" in the "Salary Desired" space, his rate of pay was greater than Respondent was paying and because for his period of employment for his last previous employer, he put in "from 90 to 92" which Benfield testified was not specific enough and therefore incomplete information.

The record reflects that McHale is a journeyman electrician who has been a member of the Union for approximately 10 years. In November 1992, he was unemployed and when he heard that Benfield had placed an ad in the newspaper for electricians he went to its Forest Hill office and filed an application along with Nathan Love. At the time, he was wearing a cap with "Local 24" on it.

When McHale and Love arrived at Respondent's office, Debbie Thompson gave them applications, which they immediately filled out. Thompson did not give McHale and Love any instructions on how to fill out the applications so he entered the word "Negotiable" in the blank labeled "Salary Desired." He did this because he did not think he would be hired if he put down the current union scale. On the other hand, he did not want to settle for a wage that was lower than Respondent was willing to pay. McHale thought he could discuss wages at the interview if one were granted. After completing his application, McHale returned it to Thompson. She said nothing about his having written "negotiable" on the application but said that the Company was going to keep taking applications and would call applicants for interviews when they were through.

McHale never received a call from Respondent, so he called back on three separate occasions in January, February, and March. Each time he spoke with Thompson who told him that Benfield had his application and, if interested, would call him.

On page two of his application, McHale noted that he had been in the Union's apprenticeship program for 5 years.

For reasons explained below, I find that McHale was identified as a union applicant and rejected for that reason.

6. *Michael Dixon* filed an application on December 2. He was rejected, according to Benfield, because his application indicated that he had earned only $10,000 and $12,000 at his last two employers. Benfield computed this salary to equate to $5 or $6 per hour, and not possibly a real wage rate for an electrician. He concluded that Dixon was mistaking or misrepresenting his wage rate and rejected him on that account. In actuality, Dixon testified, the $10,000 and $12,000 figures represented amounts earned during the few months employed by each of the two employers listed and equated to about $20 per hour. Benfield testified that he was aware at the time that Dixon applied, that one of his previous employers, Riggs Distler, was union.

Dixon noted on his application that he was a member of the Local 24 Organizing Committee. He also stated thereon that he was a Local 24 JATC graduate.

The record indicates that Michael Dixon is an electrician who has been a member of the Union for 18 years. As of December 2, Dixon was unemployed and when he saw Benfield's ad in the newspaper, he, together with Carmen Voso, went to apply at the Forest Hill office. Both he and Voso wore Local 24 jackets and hats and when they arrived were given applications by Thompson. Thompson gave them no instructions on how to fill out the applications. On page two of his application, Dixon noted that he had completed 4 years of the Local 24 apprenticeship, JATC and had served on the Local 24 organizing committee. One of the references he gave was James Correll, a business representative with Local 24.

Dixon was never contacted concerning his application so he called Respondent's office on three occasions. Each time he spoke with Thompson who advised him that Respondent did not need anyone at that time but would contact him if they did. I find, for reasons stated below, that Dixon was rejected because he was a union applicant.

7. *Carmen Voso* filed his application on December 2. Although Voso properly completed his application and indicated that he desired a salary of $12.50 per hour, Benfield nevertheless rejected him. The reason, according to Benfield, was that, like Dixon, Voso had indicated on his application that he had earned only $10,000 and $12,000 at his last two employers. As in Dixon's case, Benfield testified that he assumed that these figures referred to annual salaries and that Voso was claiming to be earning only $5 to $6 per hour as an electrician. Since Benfield did not believe this, he rejected Voso as an applicant. Like Dixon, Voso set the record straight, at the hearing, that he actually earned about $19 per hour on those jobs.

Voso noted on his application that he was a member of the organizing committee and a graduate of Local 24's JATC apprenticeship program.

The record indicates that Voso is an electrician who has been a member of the Union for 24 years. He completed a 4-year JATC program at Local 24. In November 1992, he was unemployed, and when he saw Respondent's ad in the newspaper he went to its Forest Hill office along with Dixon to file an application for employment. As noted, he wore his Local 24 jacket and cap to Respondent's office on December 2. There, he spoke with and obtained an application from Thompson. On his application, Voso wrote that he was on the organizing committee. He also noted having completed the Local 24 JATC program and gave Correll as a reference. Thompson gave him no instructions on how to fill out his application. When completed, Voso gave the form back to Thompson. Voso did not hear from Respondent after filing his application, so he called back once a month for the next 3 months. He spoke each time to the receptionist who told him that Respondent would contact him if it wished to hire him, but it was not hiring at the time. For reasons noted infra, I find that Voso was rejected unlawfully.

8. *Ivan Anderson* filed an application on December 18.

Benfield testified that Anderson was rejected for several reasons. He failed to note the specific salary he desired and wrote down "negotiable" instead, he had a wage history in the $18 to $20 per hour range, well above the amount the Company was offering and his employment history was transitory in that he held four jobs in an 8-month period. One of these jobs was with Blumenthal Kahn, a known union company. Other than this entry, nothing on the first page of the application indicated Anderson had any union affiliation. Benfield testified that if the first page of an application was incomplete or contained entries, which were the basis for rejection, he would not bother to review the second page. I find this statement incredible.

The record indicates that Ivan Anderson is an electrician with 24 years as a union member. He obtained his training through the 4-year JATC IBEW program. Prior to entering that program, he served 3 years as a pre-apprentice.

In December 1992, Anderson was unemployed and went to the union hall seeking work. Correll mentioned that Benfield was hiring and that he should go fill out an application. On December 18, Anderson went to Respondent's Forest Hill office, wearing a cap and jacket each bearing Local 24, IBEW insignia.

When Anderson arrived at Respondent's office, he asked the receptionist for an application. She provided a form but gave no instructions on how to fill it out. When he completed the form, he returned it to the receptionist. In the "Salary Desired" blank, Anderson wrote in "Negotiable" because he needed a job to feed his family and anything that Benfield would pay would be better than unemployment. Moreover, although union wages were very high at the time, his chances of being referred out of the hall were "probably next to none" because he was low on the out of work list and there were about 365 people out of work. Thompson said nothing to Anderson about his having entered "negotiable" on his application.

On his application, Iverson listed his last four previous employers. All were union contractors. He also listed his wages, all over $16 per hour. His last two employers each paid an identical $18.34 per hour. Each job lasted for only 1 or 2 months. On the second page Anderson mentioned his four years with the IBEW JATC.

When Anderson returned his application form to the receptionist, she told him that Benfield would contact him when he returned from vacation. When he did not receive any word, he called and once again spoke to the receptionist who said that they were going through the applications and would get back to him. He never heard from them. For reasons explained below, I find Anderson was denied employment because he was identified as a union applicant.

9. *Gary Griffin* filed an application on December 1.

Benfield testified that he rejected Griffin as an applicant because he wrote "negotiable" instead of listing the salary he desired, because his employment history showed wage rates between $16 and $20 per hour, well above the wage rate Benfield was offering, and because of the short duration of his previous employment.

Griffin's application identifies his last four employers as either Local 229 or Local 24 with the actual contractors also identified in parenthesis.

The record indicates that Griffin is an electrician who has been a member of the Union since 1979. He went through the IBEW-JATC program and is a master electrician licensed in Maryland.

In December 1992 Griffin was unemployed. When he heard that Benfield had placed an ad in the newspaper, he went to the Forest Hill office to file an application on December 1. When he visited Respondent's office he was wearing a union hat and a pencil clip with a Local 24 emblem on the pencil. He mentioned the ad and obtained an application from Thompson who gave him no instructions on how to fill out the application.

Griffin filled out the application there in the Respondent's office. In the "Salary Desired" space, he wrote "Negotiable." In listing his previous employers, he wrote in each space the name of the local that had referred him to the job, with the name of the contractor in parentheses.

Before leaving Respondent's office, Griffin asked Thompson if Respondent would be hiring soon. She replied that they would be hiring real soon and would get in touch with him. Respondent failed to contact him, so in a few days, he called back and was told that they were still taking applications. It was explained that after a few more applicants had filed, they would be in touch with him. He was never contacted by Respondent so he called the office a total of six times during January and February. Some of his calls, perhaps all, were taken by Thompson. One time Griffin was told that all the jobs had been filled. Another time he was told he would have to fill out an application. He replied that he had already done this and would like to speak with whoever oversees the applications. She took Griffins name and number and told him that his call would be returned. It never was.

Meanwhile, these other individuals filed applications within a week of Griffin. Gregory Guerico filed an application on December 4, was interviewed on December 7, and hired the same day; Robert Wagner also filed an application on December 4, was interviewed December 11 and hired the same day; and Paul Palaima filed his application on December 7 and reported for work January 11, 1993. There is no indication that these individuals wore anything to identify them as union members when they visited Respondent's office to file their applications nor is there anything written by them on their applications to indicate a union connection.

10. *Henry Jefferson Jr.* never filed an application at the Forest Hill location but rather at Elkridge where no commercial electricians were hired. His application was never found by Respondent and never produced by the General Counsel.

The record indicates that Jefferson is an electrician and has been a member of the Union since 1974. In January 1993,[5] he was unemployed. When informed at the union hall about Benfield's ad, he checked the newspapers the following day. He found the ad on January 28 and went to the address listed, which was in Elkridge. He was wearing a Local 24 hat at the time. At Respondent's office, Jefferson mentioned the ad and was given an application by the receptionist. She gave him no instructions on how to fill out the application.

After completing the application, Jefferson returned it to the receptionist along with a resume he had brought with him. She then asked him to wait a couple of minutes. He did so and then a man came out of an office holding Jefferson's application and resume. He asked Jefferson if he knew how to do residential work. He replied that he did and the man said that he would be in touch.

Respondent never called Jefferson back so he called Respondent. He was told that the job for which he had applied had been filled. He then asked if he could be considered for any other jobs. The person answering the phone, presumably the receptionist, said she did not know.

Jefferson's resume listed as his previous employers mostly all union contractors. Under education, it included a reference to the IBEW Local 24 apprenticeship program. For a period of time Jefferson worked out of the union hiring hall for short lengths of time for many union contractors.

On January 27, two individuals filed applications and on January 28 another individual filed an application with Respondent for employment. Scott Dannenmann was hired to begin work on February 4, Charles Corbin was interviewed and hired to begin work on January 28 but had apparently worked for Benfield before, and Hubert Martin was interviewed and hired on February 3 to begin work on February 9. None of these individuals gave Respondent any reason to believe that they were involved with the Union, neither by the way they were dressed nor by any of the entries on their applications. On the contrary, Dannenmann noted that he had gone through the 4-year Associated Builders Constructors (ABC) Electrical School, the nonunion equivalent of the IBEW-JATC program and graduated. Respondent is a member of ABC.

As indicated and explained infra, I find that Jefferson was denied employment because he was identified as a union applicant.

11. *Stephen Wollett* filed an application on February 10. Wollett put down $20 per hour as the salary desired and noted that he was earning $20 per hour on his last job. For these reasons, Benfield testified, he rejected Wollett.

The record reflects that Stephen Wollett is an electrician who has been a member of the Union for 20 years. He spent 4 years in the IBEW-JATC program.

Wollett testified that sometime around February 10 he heard through the grapevine that Benfield was hiring. He checked with the Union and was told that it would be all right to file an application with Respondent.

Wollett applied at the Forest Hill office of Respondent on February 10. The receptionist gave him the application but no instruction on how to fill it out. On the application he noted $20 per hour as the salary he desired and listed his previous employers, some of them union contractors with wages ranging, over the last few years, between $20 and $24 per hour. On the second page of his application he noted his participation in the IBEW-JATC program.

Wollett heard nothing about his application from Respondent so he made several calls to inquire. These proved fruitless.

As of April 14 Wollett was still unemployed. On that day, he and Roger Lash Jr. visited the Forest Hill office of the Respondent. Lash was wearing a union jacket at the time with the words "Local 24" showing. Both Wollett and Lash obtained application blanks from the receptionist. She did not instruct them on how to fill them out. Wollett entered $20.05 as the salary he desired and listed the same previous employers on his new application as he

[5] All dates are in 1993 unless noted otherwise.

had on his earlier application and again mentioned his JATC training. He was never contacted. I find his rejection, for reasons stated below, discriminatory.

12. *Roger Lash Jr.* filed an application on April 14, 1993. On his application, Lash entered $20.05 as the salary desired.

Benfield testified that he rejected Lash because the wage he sought was too high. He also testified that, in any case, Respondent was not hiring at the time.

The record reflects that Roger Lash, an electrician, has been a member of the Union for 21 years. He received his training through the IBEW JATC program and has a master electrician's license.

In April 1993, Lash was unemployed. When he was told Respondent was taking applications, he accompanied Wollett to the Forest Hill office to file applications. Lash wore a jacket with IBEW printed on it.

In the Respondent's office, the receptionist gave Wollett and Lash applications but did not instruct them on how to fill them out. After completing the applications they handed them back to the receptionist. She made no comment.

As Benfield testified, Lash entered $20.05 per hour as the salary he desired. He also listed his prior employers, all union, as well as the wages received from previous employer's, all around $20 per hour. On the second page, Lash noted that he was a member of the Local 24, IBEW Executive Board and that he had graduated from the IBEW-JATC program. Lash was not contacted by Respondent.

For reasons explained infra, I find that Lash was identified as a union applicant and rejected on that account.

13. *Mike Irvin* filed an application on February 2, 1993. Benfield testified that Irvin was rejected because he did not list any wage rate that he was seeking but instead noted "negotiable." He did not fill out his employment history on his application but attached a resume with a list of previous employers. Benfield expected applicants to fill out the application completely. Irvin's resume did not include his wage history, which Benfield testified he considered important. Although Irvin's application did not indicate any union affiliation, as noted by Respondent, his resume, which Benfield admitted reading, stated that he had completed a 4 year apprenticeship through Local 24 of the IBEW.

The General Counsel did not call Irvin to testify. Analysis of his resume, however, indicates that he had been employed previously by a number of union contractors, at least some of them known to Benfield.

I find that Irvin was identified by Benfield as a union applicant and for reasons noted, infra, rejected in violation of Section 8(a)(1) and (3) of the Act.

14. *Bennie Shaw* filed an application on January 28, 1993. Although Shaw completely filled out his application including the space for "Salary Desired," noting therein "$13 per hour," his application was nevertheless rejected because his employment history revealed that he was earning $20 per hour and Benfield testified that, in his experience, employees who had earned such high wage rates in the past would not stay with him, but would move on to other employers. Accordingly, Shaw was rejected. The last two employers listed on his application were Brown & Heim Electric and Enterprise Electric, both identified by Benfield as known unionized companies. Shaw also noted on the second page of his application that he had completed 5 years of Local 24 apprenticeship school. Despite Benfield's claim that he did not read the second page of an application where the first page contained information which would be grounds for rejection, I do not credit this testimony, but find that Benfield was aware of Shaw's participation in the Union's apprenticeship program and rejected his application based on his union affiliation.

Counsel for the General Counsel amended the complaint at the hearing to add 22 additional alleged discriminatees to Case 5–CA–23367.[6] Benfield testified as to why each of them were rejected.

15. *Todd Emory* filed an application on October 12, 1992. Benfield testified that he rejected Emory because although he wrote down $12 per hour as the salary desired his wage history indicated that he had received over $20 per hour and it would be inconsistent for Respondent to hire someone with such a record. The second reason Benfield rejected Emory was the fact that he was employed by each of the four employers listed on the application for just a short period of time. Finally, Benfield testified that he rejected Emory because his application was incomplete.

I find, for reasons stated below, that Benfield rejected Emory's application and those of all of the other discriminatees named and added to the complaint at the hearing for discriminatory reasons was violative of the Act. Exceptions are specifically noted.

16. *Daniel Clary* filed an application on October 5, 1992. Benfield testified that he rejected Clary's application because he failed to complete it. He listed only one previous employer, Bopat Electric, with whom he was still employed at the time he filed his application with Respondent and failed to fill in the starting date with Bopat so that Benfield could not tell how long Clary had worked there. The application indicates that Clary was making $10.50 per hour working for Bopat but desired $12.50 per hour from Respondent. Benfield testified that Bopat was not a unionized company.

Benfield, in his testimony, did not mention that attached to Clary's application were several letters of reference and a letter from Local 640, IBEW, Phoenix addressed to "Daniel S. Clary, Dear Sir & Brother," welcoming him as a new member of that local. This letter was dated November 1990.

17. *Michael Murtagh* applied November 2, 1992.

Benfield testified that he rejected Murtagh because he stated that the salary he desired was $30,000 per annum and this sum was more than Respondent was willing to pay.

Analysis of Murtagh's application indicates that he had on two occasions previously worked for Dynelectric, a union contractor known to Benfield and that he had graduated from the IBEW-JATC program.

18. *Richard Meehan* applied on November 3, 1992. Meehan failed to list the salary he was seeking but rather entered "negotiable" in the space supplied for that purpose. Meehan also noted on his application that he had been self-employed between January 1990 and July 1992. Benfield rejected Meehan's application because he wrote in "Negotiable" for salary desired and because he had been in business for himself and had the potential for once again becoming a competitor.

Analysis of Meehan's application indicates that he noted thereon that between April 1986 and June 1988 he listed his employer as Local 24 IBEW. This probably means that he was being referred out of the hiring hall during that period.

19. *Thomas Pyles* applied on November 10, 1992. Benfield testified that he rejected Pyles because he failed to put down anything in the salary desired space and he was self-employed and had been for the previous 2 years.

[6] None of the new discriminatees were called to testify but their applications were received into evidence.

Pyles' application also revealed that he had been paid $23 per hour by his two previous employers.

20. *John Lusco* filed his application on November 19, 1992. Benfield testified that he rejected Lusco because he failed to fill in the salary desired space and failed to put down the dates he worked for previous employers listed in the application. Benfield noted that apparently Lusco had misspelled the name of one of these employers and implied that this was another reason for his rejection.

Lusco had listed Blumenthal Kahn and Brown and Heim among his previous employers. Benfield was aware that these were union contractors.

21. *Chris Lusco* filed his application on November 19, 1992. Benfield testified that he rejected his application because he left the salary desired space on his application blank, failed to supply the dates of employment for previous employers, and failed to spell the name of one of them correctly.

Chris Lusco's application listed union contractors among his previous employers.

22. *John Loman Jr.* filed his application on December 3, 1992. Benfield testified that he rejected Loman's application because he failed to put down the salary he desired and wrote down "Negotiable" instead, and because he had only worked for a new months for each of the last four employers he listed on the application.

Loman's application lists Gill-Simpson and Riggs Distler among previous employers. In Respondent's brief, it is acknowledged that Benfield was aware that these were union contractors.

23. *Daniel Hicks Jr.* filed his application on December 14, 1992. Benfield testified that he rejected Hick's application because he put down $10 per hour for salary desired and that he worked for IBEW Local 24 from June 6, 1986, to October 1991 starting at $5 per hour and earning $10 per hour at the time of his layoff. Benfield testified that he found these figures inconsistent with those appearing on other applications filed previously with Respondent. Benfield explained that, first of all, the IBEW is not an employer and, second, all previous applicants who mentioned jobs obtained through the hiring hall listed wages received from the companies they worked for as being between $18 and $22 per hour. In short, Benfield claimed that he rejected Hicks for giving incorrect information.

On his application Hicks also noted that he had participated in the JATC program.

24. *Robert Clay* filed his application on December 14, 1992. Benfield testified that Clay put down that he wanted $13 per hour but that he had failed to fill in the starting and final wage rates received at his last place of employment. Nevertheless, Respondent did begin a prehire investigation and immediately found inconsistencies in the data on his application. Respondent contacted North Point Electric, one of Clay's prior employers and found that whereas Clay had claimed that he had worked for North Point from March to September 1991, North Point advised Respondent that he had worked there from December 1990 to September 1991. This inconsistency plus his failure to complete the application was the reason for his rejection, according to Benfield.

Clay listed, among his previous employers, Gill-Simpson a union contractor, admittedly known to Benfield. Although Clay noted that he had taken a course in the Associated Builders and Contractors apprenticeship program, it was apparently later that he went to work for Gill-Simpson.

25. *Eric Gerczak* filed his application on December 16, 1992. Benfield testified that he rejected *Gerczak* because he did not fill out his application completely and because he listed Beltway and Summit as his last two employers and Benfield knew them to be residential contractors. Since Benfield was not hiring residential electricians at that time he rejected *Gerczak* resume notes that he was applying for the job of residential, commercial, and industrial electrician with Respondent, that he took JATC courses at the union hall in 1986–1987 and 1988–1990 and, Benfield's testimony notwithstanding, worked for several commercial and industrial contractors—Riggs Distler Company, Inc., Dynelectric, Songer Construction, Gleason, and Gill-Simpson, all known to Benfield as union contractors. Gerczak's resume also listed a large number of jobs of short duration indicating the probable use of hiring hall facilities.

26. *George Huebner* filed his application on January 5, 1993. Benfield testified that he found Huebner's application fairly complete so contacted his last employer. After obtaining a fax number, he attempted to get further information but received nothing so he did not pursue the matter further. Huebner's wage history reflected wages higher than those being paid by the Respondent at that time and for that reason, Respondent might not have hired Huebner anyway. In any case, it never got that far.

Huebner's application does not reflect any specific union connection but does indicate a pattern of consistently high wages within the union range, on jobs located at great distances from each other, for large unionized companies, sometimes for very short periods of time. A union profile is apparent.

27. *Darryl Pate* applied February 5, 1993. Benfield testified that he rejected Pate because he failed to list his starting and final wages with any of the four previous employers he listed on his application. Benfield added that he was not sure he was hiring at that time in any case.

All of the previous employers listed by Pate on his application were well-known union contractors. Pate did not list the wages he received from these union contractors. He was not contacted, interviewed or hired. His application was apparently never processed.

28. *Larry Lee* filed his application on February 18, 1993. Benfield testified that Lee indicated a salary desired of $35,000 per year, which he computed to be $17.50 per hour, a sum greater than Respondent was willing to pay. A second reason for rejecting Lee was his failure to completely fill out the application.

On Lee's resume, he included the fact that he had completed the IBEW-JATC program but had dropped from membership in the IBEW in 1990.

29. *Jesse Pritchett III* filed his application on February 2, 1993. Benfield testified that he rejected Pritchett because he was asking $15.35 per hour, which was greater than Respondent was paying at the time and because his wage history indicated that he had been paid higher wages as well. Benfield testified that he did not know if Respondent was hiring at the time.

Pritchett's application indicates that the wages he received from his last three previous employers ranged between $18 and $20 per hour. Pritchett worked for his most recent two employers for short periods of time, 3 months and 10 days, reflecting probable union hall referral jobs. He was not contacted, nor was his application processed.

30. *Carl Elk* filed his application on August 20, 1992. Benfield testified that he rejected Elk because he wrote down "Negotiable" rather than a specific figure for the salary he desired. Nevertheless, Benfield attempted to call Elk's last employer, left a message regarding a reference but received no response. Respon-

dent did not pursue its investigation further and was not hiring at that time anyway, according to Benfield.

Unmentioned by Benfield was the fact that Elk indicated on page one of his application that he worked out of IBEW Local 592's hiring hall in Vineland, New Jersey, for almost 9 years.

31. *Anthony White* filed his application on February 25, 1993. Benfield testified that he rejected White because in the "Salary Desired" space he wrote "Open," his previous employer was more of a maintenance electrician than a construction electrician and because his application was incomplete.

White's application reflects that he earned almost $20 per hour for one employer and had graduated from a JATC program when located in Louisiana.

32. *Hans Have* filed his application on February 19, 1993. Benfield testified that he rejected Have because he did not think Respondent was hiring at that time. Have wrote $20 per hour as the salary desired, his salary history was listed as $1100 per week which Benfield calculated as $27 per hour, and he was a supervisor on his last job and Respondent was not looking for management people.

Have's application reflects a desired wage of $20 per hour, a salary history averaging in excess of that but no indication of any union affiliation or connections. Moreover, Have listed his job title as "elec. superintendent" at his last two jobs thus indicating that the higher pay he received was due to his position in management rather than reflecting a union wage. I find no reason to believe that Have's application was rejected because of suspected union affiliation. Consequently, I find no evidence of discrimination with respect to Have.

33. *Darren Rose* filed his application on October 13, 1992. Benfield testified that he rejected Rose because he wrote "Negotiable" in the "Salary Desired" blank of his application. Respondent was hiring at the time, according to Benfield.

On his application, Rose listed Local Union 24 as his employer during the period September 1985 through February 1987. Presumably he used the Union's hiring hall for referral purposes at this time.

34. *Norman Swoboda* filed his application on March 1, 1993. Benfield testified that he rejected Swoboda because he was referred to Respondent by the Meade Electric Co., a company for which Swoboda had worked for 8 years. At the time of the referral Meade was working on a Davis Bacon job and paying Swoboda a wage higher than Respondent was willing to pay. Benfield identified Meade as a nonunion employer. He testified that Respondent was not hiring at the time Swoboda filed his application.

Swoboda indicated on his application that he had completed (4 years) the Local 290 JATC program.

35. *Roy Kistner* filed two applications, one on September 16, 1992, and another on February 3, 1993. Benfield testified that he was not sure he was hiring in mid-September 1992 but rejected Kistner, in any case, because Joule Maintenance Contractors, Kistner's last employer, was not a construction contractor but a maintenance electrician and he was looking for construction electricians. As regards Kistner's February 3, 1993 application, Benfield testified that he rejected Kistner the second time for the same reasons.

On his application, Kistner noted that he had taken NEC classes and also graduated from the ABC apprenticeship program. Kistner listed at least one well-known union contractor among his previous employers. He was not contacted, interviewed, or hired. His application was not processed.

36. *Roy Hill* filed his application on February 4, 1993. Benfield testified that he rejected Hill because at the time of his application, he had been retired for 8 years and because his experience was as an electrician with the Solo Company and not in construction. Benfield testified that he did not know whether the Solo Company was union.

Hill indicated on his application that he desired in excess of $8 per hour in wages, had no union affiliations, or apparent connections but had been unemployed since 1985. I find no basis for concluding that Hill's application was rejected for discriminatory reasons.

D. Chronological Pattern of Hiring and Deviations from Respondent's Criteria for Rejection of Applications

Carl Elk, alleged discriminatee, filed an application on August 20, 1992,[7] indicating union connections.

No other individual filed during the week of August 20 or at any other time in August before Elk. Five individuals filed applications the previous month. None were contacted by Respondent.

During the week of August 24, two individuals filed applications for employment with Respondent. Neither are alleged discriminatees and neither had any apparent union connections.

J. Huber filed his application on August 26. The application was incomplete by Respondent's standards in that he listed only three, rather than the four required previous employers. Nevertheless, Respondent contacted him only to find that he was already working.

Patrick McMichael filed his application on August 28. He was contacted by Respondent, interviewed by Benfield on September 10, and hired as of September 21.

Six individuals filed applications during the week of September 6. None of them were alleged discriminatees and none of them had any apparent union connections.

On September 6, Rodney Seekforth filed an application.

> Salary Desired: $10 per hour
> Employment History: Completely filled out; No union connections; wage history $9.00 - $11.00; length of time with last four employers; 1 month; 10 1/2 months; 3 years; 1 year. Although Seekforth indicated that he was available for work as of September 7; he was not interviewed and hired until October 8, over a month later.

Edward Pietruszenski filed an application on September 8. Benfield interviewed him the same day, hired him on September 10 and put him to work the same day.

Michael Henning filed an application on September 8. Benfield apparently called Henning with regard to his application because he made a number of additions concerning the type of work Henning had done for prior employers. He was not, however, interviewed or hired.

Eduardo Calaguay filed an application on September 8. He named just one previous employer and did not fill in the blank which requested salary desired. Most of the spaces on the second page were left blank except for his signature. He attached a resume with additional information. Calaguay was not contacted by Respondent.

Robert Nickel filed an application on September 8. He failed to fill out the employment history on the application. Rather, he attached a resume which indicated that he took the ABC apprenticeship course and graduated, thus indicating nonunion contractor connections. Nickel listed about 14 previous employers with the

[7] All dates are in 1992 unless noted otherwise.

years in which he worked for them, but not the months. Despite Nickel's failure to properly complete the application and Benfield's professed aversion to resumes, he carefully went over both. Since Nickel failed to include the telephone numbers of previous employers, Benfield had to get this information himself. He then obtained information from each of Nickel's last four employers and jotted down the information himself on the resume. Clearly, Benfield was interested in Nickel despite the incomplete application and the resume. However, Benfield received a message from one of these employers on September 9 and when he called back he was told that this particular employer would not rehire Nickel because he had filed a fake workmen's compensation claim against the company. Although Nickel called Respondent on October 12, he was never interviewed or hired.

Jeffrey Brown filed an application on September 9. He indicated no union connections on his application. Respondent contacted him but was advised that he was already working.

Richard Henning filed an application on September 9. The application is incomplete in that the "Salary Desired" space was left blank and only one company was listed under employment history. Henning did not indicate any union connections on his application. A notation on the application made by one of Respondent's personnel states that Henning would visit Benfield the following day. Thus, Hennings' failure to complete the application did not prevent his being received at its facility. A second note, stapled to Hennings' application, written by Benfield and dated September 10, 1992, states:

> Hennings: Have been
> *Bad News* for BECO
> and other Elec Co's. We
> don't know this one.
> CB
> 9/10/92

Henning was apparently given some consideration but not hired.

During the week of September 14, four individuals filed applications with Benfield:

John Stratemeyer filed an application on September 14. He indicated no union connections thereon. In the "Salary Desired" space, he wrote $8 (any). He did not fill out the employment history section of the application but rather attached a resume. The resume did not reflect any union connections. In the space marked, "Position Applied for," Stratemeyer wrote "residential, commercial or service." His work history, in his resume, named only his three last employers and covered only 1988 through July 1992. One of the three was family owned. In the upper left-hand corner of the application, Benfield wrote "No?" and neither called nor interviewed Stratemeyer.

The same day, Jeffrey Walker filed an application. For "Salary Desired," he wrote $11.50 per hour. His application reflected no union connections. He listed only three employers in his employment history but one of them was Respondent. Walker had worked for Respondent from May 1985 to August 1987. Benfield interviewed Walker on September 22 and hired him immediately.

As noted earlier, Roy Kistner filed an application on September 16, 1992. He is listed in the complaint as one of the newly discovered discriminatees. His application contained the following information:

> Salary Desired: $11.50
>
> Employment History: Properly completed, four last employers listed; wages: between $10 and $12.70 per hour; length of time with each employer: 1 year 2 months, 1 year 11 months, 1 year, 2 years 4 months. Union connections: Kistner listed one union contractor, Enterprise Electric among his employers and admitted taking NEC (JATC) courses.

Respondent's reviewer wrote "no" at the top of Kistner's application and he was never called and never interviewed.

During the week of September 20–26, within a week of Kistner's application, Ronald Reville filed an application:

> Salary Desired: $12.50
>
> Employment History: Incomplete. Only three prior employers listed but Benfield was one employer. Dates of employment missing.
>
> Wage History: Between $11.00 and $13.00
>
> Union Connections: None
>
> Notation: Jerry says he's trouble.
>
> Respondent called Reville, interviewed him on October 9 and hired him on October 22.

Thus, despite Kistner's more complete employment history and request for a lower salary than Reville had asked for, and in the face of a bad report on Reville, he was chosen over Kistner for employment.

During the week of September 27–October 3, five individuals applied.

On September 28 Gregory Moore applied:

> Salary Desired: $11.00
>
> Employment History: Left blank. Resume attached with only three employers.
>
> Wage History: Not included. Benfield made inquiry personally to find out that Moore was paid $10 and $12 per hour.
>
> Union Connections: None. Third year apprentice with county indicates nonunion.
>
> Benfield called, interviewed Moore on October 8 but Moore decided on October 12 to "hold off on job" which apparently was offered.

On September 30, Mark Gilbert applied:

> Salary Desired: $11.00
>
> Employment History: Incomplete. Only two prior employers listed.
>
> Wage History: $12.00
>
> Union Connections: None

Respondent called, interviewed, and hired Gilbert on October 8.

On October 2, Micah Revels applied:

> Salary Desired: $10.50
>
> Employment History: Complete. Four prior employers listed with wage rates. Incomplete - In some cases, years but not months were noted.
>
> Wage History: $4.50 to $10.50 per hour.
>
> Union connections: None
>
> Respondent called Revels and left message. Revels never returned Respondent's call.

On October 3, Richard Warner applied:

> Salary Desired: $13.00
>
> Employment History: Complete. Worked only 3 1/2 and 6 months for last two employers.
>
> Wage History: $10.50 to $12.50.
>
> Union connections—None.

Respondent called, interviewed and hired him on October 29.

On October 3 Michael C. Raivel applied by mail. He did not use Respondent's form but sent in a resume with cover letter attached. There is no indication that Raivel was considered.

During the week of October 4–10, seven individuals filed applications:

On October 5, Steven Liersemann applied:

Salary Desired: $12.00

Employment History: Complete. Four prior employers listed with wage rates. Lengths of employment: 3 yrs. 6 mos; 7 mos; 2 yrs. 9 mos; 3 yrs.

Wage History $3.50 to $12.40

Union Connections: None. Two years apprenticeship with ABC indicates applicant is nonunion.

Respondent called, interviewed Liersemann on October 9 and hired him that date to start October 22.

On the same date, October 5, Daniel Clary, the new alleged discriminatee discussed above, applied.

Salary Desired: $12.50

Employment History: Incomplete. As noted supra, Clary listed only one of his last four employers on Respondent's application form along with wages received there as $8.00–$10.50. On the resume, he attached, Clary indicated five additional previous employers but not the wages he earned. Length of time with his last employer was incomplete but with previous employers indicated 7 months, 1 yr. and 2 years; 3 mos.

Union connections: Clary was clearly identified in the attachments to his application as an IBEW Local #640 member.

Benfield wrote "No" on the upper left hand corner of Clary's application and did not call, interview, or hire Clary.

The same date, October 5, Ronaldo Morales Sr. applied:

Salary Desired: $12.50

Employment History: Complete. Four prior employers listed along with dates of employment and wages. Length of employment: 1 yr. 7 mos; 1 yr; 5 yrs; 6 yrs 5 mos.

Wage History: $8.00–$13.50 per hour

Union connections: None

Respondent did not call or interview Morales but did check out his driving record and workmen's compensation claims.

On October 7, Donald Berry applied:

Salary Desired: $14.00 per hour

Employment History: Complete. Four prior employers listed along with wages. Last two jobs were for 3 mos. and 1 year.

Wage History: $6.00 to $15.50

Union connections: None. Apprenticeship with county indicates probably nonunion. Short length of employment with last two employers and $15.50 hourly wage indicates possible union employment.

Benfield made a telephone call, then wrote "No." Apparently, no interview was scheduled.

On October 8, Daniel Whitehurst applied:

Salary Desired: $12.50

Employment History: Incomplete. Four prior employers listed including Benfield. Employment dates for Benfield not included.

Wage History: $8.00 to $12.50

Training: County and vocational school electrical training.

Union connections: None

Respondent called, then interviewed on October 9. Scheduled for hire "when notified."

On October 9, Gregory Knefel applied:

Salary Desired: $11.00 per hour

Employment History: Incomplete: Only three prior employee were listed. Wage rate left out as to one of the three.

Wage History: $7.60 to $19.50

Union connections: None.

Benfield called and left message with Knefel's wife. He determined that Knefel was working from 11–91 through 10–92 and might still be working. He made notes to this effect on the application. Apparently no interview was scheduled.

On October 10, Charles McGhee applied:

Salary Desired: $12–$14 per hour.

Employment History: Incomplete. Four prior employers listed. Final wage at last employer left blank. Length of employment: 4 mos; 1 yr. 4 mos; less than 2 yrs; 1 yr. 3 mos.

Wage History: Not legible

Union Connections: None

Respondent called McGhee, interviewed, and hired him on October 13 to report October 27.

Of the seven applications received the week of October 4–10, six had no union connections. Respondent either called or checked out all of these applicants, interviewed three of them and hired or scheduled for hire all who were interviewed. Only Clary, the union member, was totally ignored. He was not called and his application was not processed.

During the week of October 11–17, there were nine applicants. Two of the nine are alleged discriminatees.

Paul Albert filed an application on October 11. His application was incomplete in that he listed only three prior employers. He was a graduate of the Harford County Electrical Program. Albert had no union connections. Though his desired salary was $14 per hour, and his application was incomplete, he was called, interviewed on November 9, and noted as available for work as of November 30.

On October 12, Robert Reese applied. His application was complete. On his last three jobs as an electrician, he was employed for 7 months, 5 months, and 1 year-10 months. Reese had no union connections. On the contrary, he graduated from the ABC apprenticeship program (nonunion). Despite short periods of employment with two of his last three electrical employers, Respondent called Reese, interviewed him on October 12, and hired him the same date to begin work October 22.

On October 12, Robert Gregorek applied:

Salary Desired: $12.00 per hour

Employment History: Complete. Four prior employers were listed with wages except for Maryland Air Guard. One of the four employers was noted as Local 24.

Wage History: $5.00 - $11.85 per hour

Union connections: Gregorek listed Local 24 as one of his employers.

Benfield did not call, interview, or hire Gregorek nor did he process his application. At the top of the application was written "No."

On October 12, Todd Emory, a newly added alleged discriminatee, filed an application. Benfield testified as to the reasons he did not hire Emory, infra. Briefly, these were that he had received over $20 per hour from each of his four previous employers, his period of employment with each of these employers was short, and finally, his application was incomplete. Emory's application does, in fact, indicate that his wages were over $20 per hour and that his periods of employment were short. The application, however, was complete. Benfield did not call, interview, or hire Emory and did not process his application. He just wrote "No" at the top.

Emory did not mention any union connections per se but he did indicate that he had served 4 years in an unidentified apprenticeship program and graduated. This, plus the fact that he received union scale wages and worked for relatively short periods of time for each employer, typical of a union member using the services of a hiring hall, convinces me that Benfield with his 25 years experience, knew that Emory was a union member working for union employers.

On October 13, Jeffrey Cain applied. Cain listed his last four employers but failed to fill in all of the wage rates for each. Cain indicated no union connections on his application. Despite his incomplete application, Benfield contacted Cain, interviewed him on November 10, and subsequently hired him.

On October 13, Darren Rose applied. Rose is one of the alleged discriminatees whose name was added during the hearing. As noted earlier, Benfield testified that he rejected Rose because he wrote "Negotiable" in the "Salary Desired" space of his application. However, Rose wrote Local 24 as his employer for the period September 1985 to February 1987 thus making his union connection clear. Benfield did not call, contact, interview or process Rose's application. He simply wrote "No" at the top of the application form without giving any consideration to it.

On October 16, Donald Stonebraker applied. Stonebraker completely filled out his application but wrote as the salary desired, "open for negotiation." He attached a resume to his application which was not included in the exhibit. This resume may or may not have reflected union connections. In any case, Stonebraker's Employment History clearly reflects a hiring hall pattern of employment obvious to anyone with 25 years experience in the industry: 2, 5, 13, and 4 months . Benfield rejected Stonebraker's application without contacting him. He was not interviewed or hired. Benfield wrote "No" at the top of the application, an automatic rejection.[8]

On October 16, Kerry Turner applied. Her application was incomplete. He listed only two prior employers, two prior starting salaries and no final salaries. The application reflects no union connections. Benfield, despite the incomplete application, made one or more phone calls and interviewed Turner on October 22. Either during the phone calls or the interview Benfield ascertained the identity of three additional prior employers of Turner. He completed Turner's application for him by listing the additional employers and noting the types of work Turner performed for each of the five employers named on the application. Turner's application does not indicate that he was hired despite Benfield's obvious interest in him.

On October 16, Ralph Sharretts III applied. Sharretts did not fill out the "Employment History" section of the application but attached a resume. Prior employers were not listed on the resume. On October 21, a copy of the first page of the October 16 application was sent to Respondent with a letter attached, signed "Rocky," presumably Sharretts. The letter was an apparent reply to a contact from Respondent requesting a list of prior employers. These included Respondent where Sharretts worked in 1982. There is no indication of union connections but apparently Sharretts was not hired.

To summarize the week's applications: Of the nine applications filed, four of them were from individuals who revealed union affiliations or connections either explicitly or implicitly. Their applications were given no consideration and were not processed. They were not called or otherwise contacted. Five of the applications were from individuals who had no apparent union affiliations or connections. All of them were contacted and their applications processed. Most of them were interviewed and some of them hired.

During the week of October 18–24, there were three applicants. Two of them, Hughes and Bell, are alleged discriminatees and have been discussed infra. They both were identified as union. They were not called, interviewed or hired. Hughes was discouraged from filing an application and Bell's was not processed. The third applicant, Kevin Greenfield, filed his application the day after Bell filed his. Greenfield indicated his nonunion status by noting that he had graduated from the Associated Building Contractor's apprenticeship program. Despite the fact that he stated that the salary desired was "Negotiable," Benfield processed his application, called, interviewed and hired him. He started November 12.

During the week October 25–31, four applicants filed for employment. None of them had any union affiliation or connections. All of them were contacted and interviewed, at least three, possibly all four were hired.

During the week November 1–7, 11 applications were filed, four of them by alleged discriminatees Michael Murtagh, Richard Meehan, Nathan Love, and Michael McHale. These four were clearly identified on their applications as union members, supra. They were not called, interviewed or hired. Of the remaining seven applicants, all were called, interviewed and hired except one, William Niles Jr. The applications of these seven did not reflect any union affiliations or connections. The application of Niles indicated that his last three jobs lasted 9 months, 6 months, and less than 7 months reflecting a possible hiring hall situation. One of the six who were hired, had left the "Salary Desired" space blank and another had noted $15 per hour in that space, a sum Benfield testified was excessive in cases involving union applicants.

During the week of November 8–14, 11 applications were received by Respondent. Two of them were from alleged discirminatees, Thomas Pyles and Mark DeJuliis. As noted, Pyles indicated on his application that he had received $23 per hour from his last two employers. This wage clearly reflects a union contract wage. DeJuliis, according to his application, worked for well-known union contractors for over $20 per hour, his union profile was apparent. Neither Pyles nor DeJuliis was called, interviewed or hired. Their applications were not processed.

Of the remaining nine applicants the majority failed to fill out their applications properly, leaving them incomplete. Neverthe-

[8] C. P. Exh. 9.

less, all but one of the nine who indicated no union affiliation or connection were called by Respondent and had their applications processed. All but two of the nine were interviewed and six were hired.

During the week of November 15 through 21 seven applications were received by Respondent. Two of them were from alleged discriminatees, John and Chris Lusco. Their applications, discussed supra, clearly indicate their union affiliations and connections. Respondent did not call either applicant nor process their applications. Neither was interviewed and neither was hired.

Of the remaining five applicants, one of them indicated Local 124 connections. He was not contacted and his application was not processed. He was neither interviewed nor hired. Of the other four, three were called, their applications were processed and two of these were interviewed and hired.

During the week of November 22–28, two applications were received. William Prosper's application was incomplete in that no employment history was listed. A note in that section stated "See attached." The attachment, if any, had been removed from the exhibit. A second note stated, "[Self] employed." The application indicates no union affiliation or connections. Despite Respondent's stated objections to hiring applicants who had been self-employed, to incomplete applications and to resumes, Benfield contacted, interviewed and hired Prosper.

The other application was filed by James Dunn. His application was complete. It listed four previous employers with wages ranging between $6 and $11.25 per hour, well below union contract wages. Although Dunn indicated that he had attended the IBEW apprenticeship program back in 1985, he did not graduate. Since that time he has worked for employers who appear to be nonunion for the wages already described. Dunn filed his application on November 27, was interviewed on December 14, was hired and reported for work on December 28.

During the week of November 29 through December 5, 10 applications were received. Four of the ten applications were filed by alleged discriminatees. The four were Gary Griffin, Michael Dixon, Carmen Voso, and John Loman. As noted, all four of these applicants indicated, on their applications, by one means or another, their affiliation with the Union. None were contacted, interviewed or hired. Their applications were not processed.

Of the remaining six applicants, none of them indicated any union affiliation or connections. Three of the six were contacted by Respondent, interviewed, and hired.

During the week of December 6–12, four applications were received from individuals who had no affiliation or connections with any union. One of them was hired despite the fact that his application was incomplete.

During the week of December 13–19, nine applications were received, four from alleged discriminatees Hicks, Clay, Gerczak, and Anderson. All four indicated on their applications, affiliations or connections with unions or employment by union contractors, known as such to Benfield. None of the four were contacted, interviewed or hired.

Of the five remaining applicants, only one had any union connection, a JATC apprenticeship but he, subsequently went through the ABC program and remained nonunion. Of the five, four were contacted by Respondent. One had already obtained nonunion employment and three were interviewed and hired.

During the rest of December, only one application was filed and it was not processed.

During the week of January 3–9, 1993,[9] three applications were received. One was from alleged discriminatee, George Huebner. Huebner did not indicate any specific union affiliation or connection with any union but did indicate salaries ranging between $15 and $19.05, clearly in the probable union rate range. Respondent did not contact, interview or seek to hire Huebner. The other two applicants were nonunion. One of them was contacted, interviewed and hired.

During the week of January 10–16, two applications were received, both from individuals with no apparent affiliation with or connections to any union. Respondent hired one of them.

During the week of January 17–23, three applications were received. None of the three applications was filed by an alleged discriminatee. None of the three applications overtly noted any connection to or affiliation with a union. Benfield contacted, interviewed and hired two of the three, Ruffersberger and Greenstreet. The third applicant, John Kujawa, was not contacted, interviewed or hired. At the top of his application was written the word "No," and for emphasis a star was placed next to that word. The reason for his rejection is obvious. His application reflects the profile of a typical union electrician. Kujawa earned over $20 per hour, the going union industrial wage rate, from each of his last two employers and the duration of the period of his employment with each was about 4-1/2 months with one employer and 2 weeks with the other. The short duration of these jobs would reflect probable referrals from a union hiring hall. This fact would not escape the attention of someone with 25 years' experience in the electrical industry, like Benfield.

During the week of January 24–30, 10 applicants sought employment with Respondent. Two of these are alleged discriminatees, Henry Jefferson and Bennie Shaw. Their situations have already been discussed. They were not hired. Of the remaining eight applications, none indicated any union affiliations or connections. Respondent contacted five of the eight. One was already working and Respondent interviewed and hired the other four.

During the week of January 31 through February 6, 21 applications were received. Five of the twenty-one were filed by alleged discriminatees Irwin, Pritchett, Kistner, Hill, and Pate. The applications of these five individuals have been discussed infra. All were identified in their applications as being affiliated with or somehow connected to the Union. All were rejected for employment.

Of the remaining 16 applications, none indicated affiliation or connection with any union. Respondent contacted eleven of these applicants, interviewed and offered jobs to all of them. Nine accepted Respondent's offers and were hired. Respondent contacted these applicants though most of them had filed incomplete applications.

During the week of February 7–13, four applications were received, one of them from alleged discriminatee Stephen Wollett. His unsuccessfully attempts at obtaining employment with Respondent has been recounted, infra. Of the remaining three applicants, two, Hoover and Wilson, indicated on their applications that they were graduates of the nonunion ABC apprenticeship program. They were contacted, interviewed, and hired. The third applicant, John Rupp, indicated on his application and attached resume that he had worked for only 2 or 3 months for each of his previous five employers thus reflecting probable participation in a union hiring hall referral system. He did not indicate any specific salary desired but did reveal that he had earned as much as $18.25

[9] All dates are in 1993 unless noted otherwise.

and $25.20 in past salaries from his prior employers. He noted on his resume that he had graduated from the IBEW apprenticeship program. Rupp was not contacted by the Respondent nor was his application processed.

During the week of February 14–20, Respondent received six applications. Two of them were from alleged discriminatees Larry lee and Hans Have. As noted supra, both Lee and Have gave information in their application reflecting possible affiliation with or connection to a union. Neither was contacted, interviewed or hired. Of the remaining four applicants, Respondent contacted, interviewed, and hired one.

During the week of February 21–27, Respondent received seven applications. One of them was filed by alleged discriminatee Anthony White, whose union affiliation and connections and rejection have already been discussed. Of the remaining six applications, none reflected any union affiliations or connections. Four of these applicants were contacted by Respondent and three of them were interviewed and hired.

During the week of February 28 through March 6, Respondent received eight applications, one was from alleged discriminatee, Norman Swaboda whose union affiliation and rejection by Respondent has been discussed infra. Of the seven remaining applications, none specifically mentioned any union affiliation or connection. One of these mentioned Enterprise, a known union employer. The individual who filed that application, Gregory Chase, was not contacted. Of the six remaining applicants, four were contacted, interviewed, and hired.

During the week of March 7–13, only three applications were received. None were processed and none of the applicants were hired. On March 9, however, the charge in Case 5–CA–23367 was filed alleging the discriminatory refusal to hire 11 applicants because of their membership in and activities on behalf of the Union. An investigation was subsequently undertaken by the Region. Meanwhile, however, Respondent continued the same hiring practices it had followed in the past.

During the week of March 14–20, one individual was hired, Mike McKay. It is not clear when, if at all, he filed a written application. Another individual filed an application but was not contacted, interviewed, or hired.

During the week of March 21–27 two applications were filed, both by applicants who did not indicate any union affiliation or connection on their applications. They were neither contacted nor hired.

During the 2 weeks of March 28 through April 10 no applications were received. However, during the week of April 11–17 four applications were received. Two of the applicants were alleged discriminatees Roger Lash Jr. and Stephen Wollett, whose rejections have already been discussed. The other two applications had no indication that the applicants had union affiliations or connections. They were not contacted either.

During the 5-week period, April 18 through May 22, Respondent received six applications, all from applicants who were not affiliated with nor connected to any labor organization. They were not contacted but some of their applications were processed to the extent that previous employers were contacted despite the fact that their applications were incomplete.

On May 4, a Board agent met with and interviewed Respondent's witnesses in order to determine its position with regard to the charges filed against it in Case 5–CA–23367. On May 10, Respondent, referring to the earlier meeting, summarized its position in a letter sent to the Board agent at the Regional Office by Respondent's attorney. The letter noted that copies of relevant applications of individuals hired during the period in question had been supplied at the earlier meeting.

According to the May 10 position letter, Respondent decided in 1992 that it was going to have to hire a number of employees between November 1992 and March 1993 because of a large project it had at the Francis Scott Key Medical Center. In preparation for the hiring and to fill its complement, Respondent, on various dates between September 4, 1992, and February 5, 1993, advertised for commercial electricians, apprentices and helpers in the Baltimore Sun.

In reply to its advertisements, Respondent received hundreds of applications. Many of the applications were incomplete and were summarily disregarded. Others, which were complete were rejected based on certain information which made the applicant undesirable as an employee. These included, according to the letter:

1. Applications which did not indicate the position for which the person was applying.

2. Applications which were not accompanied by certain supporting documentation, i.e., driver's license and social security card.

3. Applications which did not include the specific wage rate sought by the applicant. Also applications, which left the "Salary Desired" space blank or had "negotiable," "job rate," or similar statement entered in it. These were rejected because Benfield did not want to bother contacting individuals to pursue the matter.

4. Applications in which the individual indicated that the wage rate sought was substantially higher than what the Respondent intended to pay ($9 to $13 range).

5. Applications in which the individual's recent employment history indicated that he had been earning a wage substantially higher than that being offered. In explanation, the letter stated that Benfield considered it likely that any such individual would either not accept the job offered at the lower rate or, if he would, he would only stay on a short-term basis until he could obtain a job in keeping with his earlier, higher pay rate.

6. Applications, which indicated that the individual's length of service with prior employers was short-term, i.e., less than 6 months. Such individuals, the letter explained, were considered to be unlikely to stay for very long with Respondent and therefore a risky choice. The letter pointed out that the applications of the applicants hired, all reflect long-term employment.

In addition to discussing the above criteria to be met before an applicant is considered for employment, the letter also noted that typically, applications were usually discarded after a week because it was assumed that applicants would have found other employment by that time. The letter explained that rather than keep the application active and contacting the applicants at a later date, Benfield preferred to advertise for new applicants as openings occurred. This explanation was intended to emphasize the importance of timing, in the consideration of applications. The letter of position then went on to apply to the named alleged discriminatees in the charge, the criteria for rejection specified in the earlier part of the letter. This same information was the subject of Benfield's testimony during the trial and has already been covered. The letter concluded with a statement that there is no evidence of antiunion animus on the part of Benfield or Respondent and a denial that Benfield was ever aware of any union activity or support on the part of the employees. He specifically denied that he ever looked at the sections of the applications, which indicated affiliation with the Union, while reviewing the applications.

On May 24, Respondent's attorney sent to the Board's attorney handling the case a supplemental letter to its statement of position dated May 10, drawing attention to *Wireways, Inc.*, 309 NLRB 245 (1992), and similarities between the cited case and the instant case.

Historically, the Board's policy has been not to issue investigatory subpoenas and it did not do so in the instant case. Rather, the Region weighed the evidence presented by the Charging Party against the Respondent's statement of position as reflected by its letters of May 10 and 24, then issued the dismissal letter of July 16, quoted in relevant part infra. The dismissal was not appealed.

During the period of the investigation and thereafter, the Respondent maintained its hiring practices just as before. During the two weeks of May 22 through June 5, eight applications were received. None of the applications indicated direct affiliation or connections with a union. However, two indicated indirect or probable affiliations and these applicants were not called. Three of the eight applicants were contacted. These had no apparent affiliations or connections with unions. They were interviewed and hired.

During the week of June 6–12, no applications were received. The following week, however, June 13–19, two applications were received. One of the applicants listed a union employer among those he had worked for previously. The other listed Local 24 among his prior employers. Respondent contacted neither.

During the 2-week period June 20 through July 3 two applications were received but neither applicant was contacted.

During the week of July 4–10, two applications were received from applicants with no union affiliations or connections, one a graduate of the ABC apprenticeship program. Both were called, interviewed and hired. In one case, hiring did not occur until 19 days after the application date.

During the week of August 1 through 7, two applications were received, both from applicants who had no union affiliations or connections. One, Orea, completed his application totally, front and back. He was not contacted. The other, Zambower, left the entire employment history section blank as to names of prior employers, dates of employment and wages. He attached a resume in which he listed his last four employers. He indicated no dates of employment, wages or names of supervisors. Nevertheless, Respondent contacted, interviewed and hired him.

During the week August 8–14, two applications were received. One from an individual named Widomski who indicated on his application that in 1987 he got a job as a helper for a company in Virginia, through a union in Washington, D.C. He was contacted and interviewed by someone other than Benfield. The interviewer hired him as a mechanic at $9.50 per hour. He was terminated effective September 13. A note on his termination report indicates that he quit after being asked to pay for a truck he wrecked. The other applicant had no union affiliation or connection. He was not contacted.

During September, six applications were received. None of the applications indicated union affiliations or connections. Four of the six applicants were contacted. One of the four, Henning, was contacted despite the fact that he left the "Salary Desired" space blank and the "Employment History" section virtually blank. An interview apparently took place but Henning was not hired because prior employers advised Benfield that he was "bad news." Three applicants were contacted, interviewed and hired despite the fact that one of them had a history of short periods of employment (but with less than union wages) and another's application was incomplete in that most of the wage rates at former employers was left blank.

During the first half of November, only one application was received. It was from an applicant with no apparent affiliation or connection with any union. Respondent did not contact this individual.

E. Case 5–CA–24393

On November 18, in response to one of Respondent's newspaper ads, James Jarvis, assistant business manager and vice president of Local 24 visited Respondent's Forest Hill office. He was accompanied by James Correll, business representative for the same local and seven unemployed members of the Union, some of them wearing Local 24 hats and jackets. Jarvis presented himself to the receptionist and gave her his card. He told her that the unemployed members present were seeking employment and requested applications.

The receptionist gave Jarvis applications to distribute among the members and instructed them to fill them out completely on both sides. She advised Jarvis that the applications would be kept on file for 14 days. After completing their applications the union members returned them to the receptionist and left.

All of the applications filed that day by the union members reflected their union affiliations and connections. None of them were ever contacted by Respondent.

The very next day, two applications were received by Respondent. Neither one reflected any union affiliation or connection. Respondent contacted one of the applicants, interviewed and hired him.

On December 1, Brian Loftis filed an application with Respondent. It reflected no union affiliation or connections. In the "Salary Desired" space, Loftis entered $15, an amount found excessive by Respondent when requested by a union applicant. Loftis also left his application incomplete by Respondent's standards by failing to indicate his dates of employment (months and sometimes years) with prior employers.

The following day, December 2, Jarvis once again visited Forrest Hill. He was accompanied on this occasion by Correll and by five unemployed members of the Union, all wearing Local 24 hats and jackets. He started to introduce himself and present his card to the receptionist but she left. When she returned, she distributed applications but gave no instructions. The five unemployed union members filled out the applications and returned them to the receptionist. All of them reflected some indication of a probable affiliation or connection with a union. She told them that someone would get in touch with them. They left. Of the six applicants that filed applications that week, none of the union members were contacted, interviewed or hired. Only Loftis was contacted. He was interviewed on December 7 and began working December 8.

Toward the end of December, two applications were received by Respondent, neither one reflecting union affiliation or connection. Respondent did not, however, contact either applicant.

In January 1994,[10] three applications were received from individuals, none of whom indicated any affiliation or connection with a union. All three were contacted, interviewed and hired although one of them failed to list the months of his employment with prior employers.

During February, three applications were filed. None of the applicants indicated any union affiliations or connections. Re-

[10] All dates are in 1994 unless noted otherwise.

spondent contacted, interviewed, and hired one of them despite the fact that he had only one previous employer listed. Although the successful applicant had an application date of February 3, he was not interviewed until February 23, not hired until March 1 and not on the job until March 10.

In March, two applications were received both from applicants without any apparent affiliation or connection with any union. Respondent called, interviewed, and hired one of them despite the fact that he failed to enter the months he was employed by previous employers. Although he filed his application on March 15, he was not interviewed until April 4.

In April, two applications were received, both from applicants who did not indicate any affiliation or connection with any union. Both were contacted, interviewed and hired although one of them listed only three rather than four previous employers.

On May 6, the Charging Party filed the charge in Case 5–CA–24393. The charge alleged that Respondent violated Section 8(a)(1) and (3) of the Act by refusing to hire for discriminatory reasons:

On November 18, 1993:

Mark DeJuliis	George Woods
Steven Waltrup	Eric Halling
Gary Griffin	Jim Jarvis
Devereaux Bressler	Donald Wright

and

On December 2, 1993:

Charles McNeal	Gary Prestianni
Bill Day	Phillip Kovaleski

Shortly after the filing of the charge, the Region undertook an investigation.

Respondent contends that each one of the alleged discriminatees named in the complaint in Case 5–CA–24393 was rejected because he failed to meet one or more of its "criteria." Thus, according to Respondent, the following individuals filed applications on November 18 and/or December 2, 1993:

37. *Mark DeJuliis*. Benfield testified that DeJuliis was not considered for employment because his applications of those dates did not reflect any residential experience. Moreover, one of the applications indicated that DeJuliis had, at one time, been in business for himself and, according to Benfield, Respondent has a policy of not hiring individuals who at anytime have been self-employed.

Analysis of DeJuliis' application indicates, contrary to Benfield's testimony, that when he was self-employed, he did service work. That means residential work. The applications, more importantly, clearly state that DeJuliis is a volunteer union organizer, a graduate of the Local 24 IBEW-JATC and a longtime employee of known union employers.

38. *Steven Waltrup*. Benfield testified that he rejected Waltrup's application because it failed to include the salary he desired, did not show any residential work and failed to list wages received from previous employers.

Waltrup's application states "shop wages" as the salary desired, does not indicate residential work experience and states "union wages" for three previous employers. The application indicates that Waltrup went through the Local 24 training program.

39. *Gary Griffin*. Benfield testified that he rejected Griffin's application because it did not include the salary he desired, did not show any residential experience and his previous wages were greater than the wages Respondent was paying.

Griffin's application, in the "Salary Desired" space states "shop wages currently being paid." It does not mention residential experience and does, in fact, list wages ranging between $17.90 and $22.40. Griffin's application clearly reflects a union profile. He previously worked for union employers at union wages on short-term jobs and noted that he was a graduate of the Local 24 JATC.

40. *Devereaux Bressler*. Benfield testified that he rejected Bressler's application because he did not indicate the salary he desired, failed to list previous employers and wages and did not indicate any residential experience.

Bressler's application indicates that Bressler had requested "shop wages," listed three previous employers, all union employers and also listed "union wages" as the hourly rate in each case. Contrary to Benfield's testimony, Bressler listed residential work as one of his qualifications.

41. *George Woods*. Benfield testified that he rejected the application of George Woods because he wrote in "shop wages" instead of a specific salary desired, wrote in Local 24 IBEW as his employer for 30 years, failed to indicate previous wages earned while employed by his four previous employers and showed no residential experience or experience of any kind.

Woods' application does, in fact, reflect the description of it as testified to by Benfield. It also states that Woods is a union organizer for the Electricians' Union.

42. *Eric Halling*. Benfield testified that he rejected Halling because his application did not reflect any residential experience, failed to indicate the salary he desired and failed to list wages earned while working for previous employers.

Halling's application does, in fact, reflect the omissions concerning which Benfield testified. It also profiles Halling as a union member since it lists Local 24 IBEW as Halling's employer from 1980 to 1993 and notes his graduation from the JATC in 1984.

43. *Donald Wright*. Benfield testified that he rejected Wright's application because instead of indicating the specific salary he desired, Wright wrote in "shop wages," because Wright's two previous employers did not indicate any residential experience and because Wright did not indicate previous pay rates for one of the two previous employers listed and the pay rates listed for the other one were higher than the wages paid by Respondent.

Wright's application does, generally, reflect the criticism's concerning which Benfield testified but also indicates house wiring qualifications as one of the Wright's skills. The application also overtly informs Respondent that Wright, for 20 years, obtained his employment through Local 24, IBEW and was graduated from Local 24 JATC in 1977.

44. *Charles McNeal*. Benfield testified that he rejected McNeal because, in his application, he failed to indicate the salary he desired, failed to complete his application and showed no residential experience.

The application reflects that McNeal entered "open" in the "Salary Desired" space, did fail to complete his application and did not show any residential experience. He showed his union connections by listing three known union employers among his previous four and gave Local Union 24 as a reference.

45. *William Day*. Benfield testified that he rejected Day because on his application, he failed to note the salary he desired, listed wages from previous employers in excess of what Respondent was willing to pay and listed no residential experience.

Day's application reflects that he had left the salary desired space blank, indicated wages sometimes in excess of $20 per hour when previously employed and did not list any residential experience. Day's union connections are indicated by his listing of at least one previous union employer and his high ($19 to $21) hourly wages.

46. *Gary Prestianni*. Benfield testified that he rejected Prestianni because he did not list anything as far as salary desired, his previous wage history indicated wages higher than Respondent was considering paying and he listed no residential experience.

Prestianni's application does support Benfield's testimony as to its actual content. Over and above Benfield's testimony, however, the application also indicates that Prestianni worked previously for a number of union employers at a union wage, $20 per hour, on a number of short-term jobs. Although Prestianni did not mention residential experience per se, he did indicate that he held a master electrician's license in two States, which clearly guarantees that he would be capable of performing residential wiring. Finally, Prestianni noted that he had been graduated from JATC in 1979 and had done some union organizing.

47. *Philip Kovaleski*. Benfield testified that he rejected Kovaleski because he failed to indicate the salary he desired, failed to indicate any residential experience and listed a history of wage earnings higher than Respondent was paying.

Kovaleski's application reflects the accuracy of Benfield's description of it. Kovaleski's probable union affiliation is, however, reflected in the fact that his last four employers were engaged in construction projects in four different states, employed him for only 1 to 5 months each, paid him a union wage ($16 to $20) and included at least one well-known union contractor. Kovaleski noted that he had been graduated from apprenticeship school at Bethlehem Steel, a union employer.

During the investigation of Case 5–CA–24393, Board investigators obtained information which revealed, for the first time, that Respondent had had in place since 1992, a hiring system which automatically precluded the hiring of union and suspected union applicants and that the professed economic basis for its hiring system, proffered in its position letter dated May 10, 1993, in Case 5–CA–23367 was fraudulent.

During the investigation of Case 5–CA–24393, Board personnel spoke to a number of witnesses privy to matters relevant to that case and to Case 5–CA–23367. Donald Ruleman had been an employee of Respondent from September 1979 to May 10, 1993. At the time he left Respondent's employ, he was service manager with an office located at Forest Hill. He had held that job for the previous 9 years during which time his immediate superior was Charles Benfield.

Ruleman testified that as service manager, he was head of the service department and did all of the hiring and firing for that division. Procedurally, whichever division manager needed additional help would put an ad in the paper. Then when individuals came in, they would file their applications with the receptionist, Benfield would screen the applications and the receptionist would then advise the division manager. The division manager would then hire the personnel he needed for his particular division.

Ruleman testified that when a division manager received an application, presumably after Benfield had screened it, he would check it to see what salary was expected, how long the applicant had been employed by his previous employers and what kind of working experience he had. There were no rules or particular reasons in effect for discarding applications or ruling out specific applicants. There were no rules with respect to the completeness of applications. Specifically, there was no rule with regard to filling out the space entitled "Salary Desired," and no policy with respect to an application in which that space is filled out with the word "Negotiable." Applications were sometimes kept on file for 6 months, all in one notebook, regardless of division. If a division manager needed someone, he would check the applications in this one notebook to find an applicant with the experience needed.

Ruleman testified that in the fall of 1992, when applications were being filed with Respondent, in preparation for the Francis Scott Key job, Barry Burnick, head of the commercial division, and Benfield both told him that they would be going through the applications and would have to watch for union infiltrators and plants. Ruleman actually saw Benfield and Burnick go through applications[11] on occasion and put aside applications which they suspected had been filed by union members. Their suspicious, according to Ruleman, appeared to be based, in part, on the applicants having worked for known union contractors or in some other way connected to the Union. Ruleman testified that if the salary requested was $20 per hour or if the applicant, in the past, had earned a similar amount, that fact reflected probable union membership. These were the criteria upon which Benfield and Burnick based their selections from the available applications.

With respect to Respondent's demonstrated antiunion animus, Ruleman advised the Board in the summer of 1994 that he had heard vice president, later President Patricia Benfield state several times between 1990 and 1993 that as long as she was there, there would never be a union at Benfield Electric.[12]

The information, which Ruleman supplied to the Board and about which he testified at the hearing, did not come to the attention of the Board until July 1994. Up to this point, the Region had no evidence of any antiunion animus on the part of Respondent's management. Indeed, all the Region had was Respondent's May 10 letter which assured it that the "Charging Parties . . . alleged union activity played no role in the decision not to hire each one of them." The letter unabashedly but fraudulently asserted:[13]

> Plainly there is no evidence to support the allegation that any or all of the Charging Parties were rejected because of anti-union animus on the part of Benfield. Indeed, there is no evidence that Benfield has any anti-union animus. There is no evidence that Benfield has ever rejected any applicant because of prior union activity or affiliation. As Mr. Benfield indicated at our meeting, he is unaware of whether or not any of his employees were former union members or whether or not they are union supporters. Also, as Mr. Benfield indicated, in reviewing the Charging Parties' applications, he never looked at the sections which may have indicated affiliation with IBEW.

Clearly, the information obtained from Ruleman and other witnesses who made themselves available, for the first time, in the summer of 1994 raised the initial questions concerning the veracity of the statements contained in Respondent's May 10, 1993 letter and permitted the revocation of the dismissal of the initial charge and the eventual issuance of the complaint in Case 5–CA–23367.

A second individual who offered information to the Board during its investigation of the charge in Case 5–CA–24393 was

[11] Where Benfield's testimony is inconsistent with Ruleman's, which is reflected in the text, Ruleman's is credited.

[12] Patricia Benfield denied making this statement. Her denial is not credited.

[13] Pp. 6 and 7.

Ronald Messina. This occurred in July 1994 after Ruleman supplied Messina's name to the Board. Messina supplied an affidavit to the Board on that occasion.

Messina testified at the hearing that he had been employed by Respondent from early 1987 until September 30, 1993, as an estimator under Barry Burnick in the commercial division. According to Messina, in May or June 1992, he was involved with the Francis Scott Key Medical Center project before it was actually decided to bid on the job. He was present when Benfield and Burnick were discussing whether or not to make a bid. They noted in their conversation that Respondent would be the only open shop contractor out of six bidding on the job. Burnick commented that Respondent would have to be careful about who it hired and put on the job for fear that people hired might want to organize the Company. Since it was a large job, Respondent would need a lot of men to man the job. Ads would have to be placed because the additional help would have to be gotten from somewhere. Because it was a large job, Burnick and Benfield were concerned about the problem of infiltration by union people when adding new hires. This concern, Messina mentioned, had manifested itself on previous occasions. Specifically, Messina cited a 1988 Fort Meade project concerning which Burnick voiced concern about union infiltration and the need to be careful about who Respondent hired. On this occasion also, Benfield agreed with Burnick that they would have to be alert as to who they hired. "Screening" was a term used by one or the other, according to Messina, but he could not recall which one of the two used it.

In October through December 1992, Messina testified, he was at the Francis Scott Key project where Bruce Pendell was the job superintendent. Messina and Pendell both had their offices in a trailer. One day, Pendell came into the trailer rather agitated and announced that management had just found out that a union plant had been hired and was on the job. He commented that he did not need any problems like that at that time.

A third individual who offered information to the Board during the investigation of the charge in Case 5–CA–24393, during the summer of 1994 was Karen Poling. She had been employed by Respondent from November 1993 until February 1994. She started as a receptionist in the front office and remained on that job until the middle of December when she was transferred to the back room to do payroll. As a receptionist, Poling was trained by Debbie Thompson, her predecessor. One of Poling's duties was to hand out applications. Thompson instructed her that all of the spaces on the applications had to be filled in, otherwise the application would not be considered at all. If an application was not completely filled in, Thompson said, Poling was to inform the applicant to fill it in Thompson also told Poling that the "Salary Desired" space had to be filled in with a figure, that if it had been filled in with the words "negotiable," "open," or "job rate," Poling was to return it to the applicant with instructions to write in a figure. Union workers, however, were to be treated as exceptions. Thompson told Poling that union workers were not to be given any instructions concerning their applications. She was just to give them the applications and say nothing.

Thompson also instructed Poling to make photocopies of applicants' driver's licenses and social security cards and staple them to their applications. However, in the case of union workers, Thompson instructed her not to ask them for their licenses or cards. If applicants asked Poling questions, she was supposed to answer them. However, if the applicant was a union worker, she was instructed not do so.

Union applicants did, in fact, appear at Respondent's office on two occasions while Poling was employed as a receptionist. The first time was on her first or second day of work while she was still being trained. Benfield first noticed them in the parking lot, identified them by their vehicle and told Poling who they were. He told her not give any information whatsoever to them. He then added that he would never hire a union worker.

Thompson was present in the office during this first visit of the union workers. She handed applications to them, but did not check the applications nor give them any information. After taking the applications back from the union workers, Thompson placed them on the desk. Later, Benfield picked them up.

On the second occasion of the union worker's visit to Respondent's office, there were 10 to 15 of them and one of them had a video camera. Although Poling was at the front desk on this occasion, she paged Thompson who then came out and handed out the applications but gave out no information.[14]

Kelly Cimino was the fourth individual who had previously worked for Respondent who offered information to the Board during its investigation of the charge in Case 5–CA–24393 during 1994.

Cimino was employed by Respondent from March to August 1994 as a secretary receptionist. Her supervisor was Patricia Benfield. Kelly Simmons, the secretary/receptionist at the time, trained Cimino in her job duties before moving to the back office to perform other work.

Cimino testified that she handed out applications to people who came in and asked for them, then made sure they were filled out correctly including the "Salary Desired" space, which she highlighted. If an applicant failed to fill out the "Salary Desired" space or had filled it in with "open" or "negotiable," Cimino told the applicant that she could not accept the application unless he put in a figure. Then, the applicant would do so. After receiving the completed application, Cimino would make copies of the applicant's driver's license and social security card. She put the completed applications on the corner of her desk till picked up by someone.

Two months after Cimino started working for Respondent, Benfield told her that he preferred that the applications not be given to union members. He would identify to Cimino, those applicants who were union workers as they came in and Cimino would tell them that Respondent was not hiring. On one occasion, Benfield told Cimino that union members might be coming in with cameras and to tell them Respondent was not hiring.

John Hayes was the fifth individual who had previously worked for Respondent who offered information to the Board during its investigation of the charge in Case 5–CA–24393 during 1994.

Hayes began work for Benfield in the late part of July 1993 and remained an employee there for approximately 5 months. He worked out of the Forrest Hill office under the supervision of Bill Peters.

Hayes filed his first application with Respondent on June 4, 1993, at the Forrest Hill office when he noticed the ad in the newspaper. He spoke to Thompson on that occasion. She first asked to see his driver's license and social security card, then gave him an application to complete. He wrote $8 as the salary he desired and completely filled out the employment history section. He indicated no union affiliation or connection on his application.

[14] Poling's testimony is fully credited. Where there are disparities or inconsistencies between Poling's testimony as reflected in the text and that of Thompson and Benfield, Poling's is credited.

However, he attached a resume on which he listed Riggs Distler & Co., Inc., a well-known union company, as one of his prior employers. After Hayes returned his application to Thompson, she told him that somebody would be contacting him. Thereafter Hayes called in every other week to check up on his application but was told by Thompson that no one had yet looked at it and Benfield was away on vacation.

On June 5, 1993, the day after Hayes filed his application, Thomas Loetz filed his application, also at Forrest Hill. Although he entered $13 per hour as salary desired, considerably more than Hayes, and listed only two previous employers as opposed to the required four and left three of four hourly rates blank, Benfield nevertheless processed his application. When Benfield checked with Loetz' most recent previous employer, Cranston, he was informed that Loetz was "kinda slow-physically and mentally." But there was no evidence of any union affiliation or connection on his application, so Benfield scheduled an interview with Loetz on June 9, despite Cranston's ringing endorsement. Benfield wrote down Cranston's description of Loetz on his application along with the remark," Give him chance and keep an eye on him." Loetz was hired as of the day of his interview and began work June 14, 1993.

On July 7, 1993, Hayes returned to the Forrest Hill office and applied a second time. Again he spoke with Thompson and the same procedure was followed. This time, however, Hayes entered $8.50 as the salary desired, slightly more than he had the first time and did not attach a copy of the resume so that his previous connection with the union company, Riggs Distler, did not appear.

In about a week, Thompson called Hayes and scheduled an interview for Hayes with Barry Wolf, the district manager. Hayes was interviewed and hired on July 26, 1993, and reported for work on July 28, 1993.

Following his being hired in late July 1993, Hayes was witness to several relevant incidents, which did not come to the Region's attention until the following year. These will be discussed in their chronological order, infra.

While the Board was interviewing and obtaining new and valuable information from these former employees of Respondent following the filing of the charge in Case 5–CA–24393, Respondent continued to maintain the same hiring policies that had been in effect back in 1992.

During the week of July 3–9, 1994, three applications were received. One of them was filed by James Morton, an alleged discriminatee added to the list at the hearing. Benfield testified that Morton was rejected because the salary he desired was too high and his application did not reflect that he had any residential experience. Benfield added that his past wages had been in the range of $15 to $17, inferring that these past higher wages were an additional reason for Morton's rejection.

Analysis of Morton's application indicates that he did, in fact, note $15 as the desired wage, that he had received between $15 and $17.10 per hour but that, contrary to Benfield's testimony, he did stated that he was qualified to do any residential wiring. More importantly, Morton's application indicated that he had graduated from the JATC program, thus overtly reflecting his union connection. He was not contacted.

Of the two remaining applications neither indicated any union affiliations or connections. Respondent contacted one of them despite the fact that only three previous employers were listed. This applicant, Brian Groomes was interviewed and hired, though not until over a month after the application was filed.

F. Case 5–CA–24932

On July 15, Jarvis visited Respondent's Elkridge office in response to one of Respondent's ads. He was accompanied once again by Correll and by six unemployed members, some of whom wore Local 24 hats and shirts. He asked the receptionist for applications and, in turn, was asked to have his members fill them out one at a time. She also asked for a driver's license and social security card from each applicant. All of the union members filled out the applications as did Jarvis and returned them to the receptionist. She told them that someone would be in touch with them.

According to Alan Simon, Respondent's vice president who is in charge of the Elkridge office, seven applications were accepted that day. Six of them were filed by individuals subsequently to be named in Case 5–CA–24932 as alleged discriminatees because of Respondent's rejection of these same applications. These six were Mark DeJuliis, Kevin Balbo, Frank Cookerly, Henry Duke, Joseph Mills, and George Woods. Simon testified concerning these six applications that he reviewed them all and rejected them all.

Jarvis testified concerning the six unemployed union members, who accompanied him on this date, that all were capable of doing residential work. He testified similarly to the abilities of all union members who accompanied him on all previous visits to Respondent's offices. He testified credibly that residential and commercial work is very similar, in effect, that if an electrician could do commercial work, he could also do residential work.

48. *Mark DeJuliis*. Simon testified that he personally reviewed DeJuliis' application and rejected it because it did not indicate any residential journeyman experience. This is true. DeJuliis did not specifically describe his residential experience. He did, however, note that he is a master electrician in Maryland and Georgia, a designation, which encompasses residential skills. He also identified himself in his application as a volunteer union organizer and a graduate of the "electrician's union JATC."

49. *Kevin Balbo*. Simon testified that he personally reviewed Balbo's application when it was received in July and that he rejected it because Balbo apparently had no residential experience, just commercial, and industrial experience.

Contrary to Simon's testimony, Balbo's application clearly states, "Experienced in all phases of electrical work." The application also identifies Balbo as a graduate of "Local Union #24 IBEW App. Course," and a past employee of several union employers.

50. *Frank Cookerly*. Simon testified that he rejected Cookerly's application when it was received in July because it showed no residential experience, it failed to note the salary desired and because it indicated that Cookerly's previous wages had been too high.

Cookerly's application does, in fact, have "shop wages" for salary desired and a wage history indicating a range between $17.25 and $21.25. However, his application also notes that he had worked "in all phases of elect. work." Obviously, that includes residential work. Cookerly listed union employers among those for whom he worked previously.

51. *Henry Duke*. Simon testified that he reviewed Duke's application when it was received in July and found no indication on it that he had any residential experience. Simon implied that this was the reason for the rejection of Duke's application. The fact that Duke failed to indicate any salary desired and left blank most of the hourly wage rates he earned while working for previous employers was mentioned in Respondent's brief, implying that these omissions were also reasons for rejection of the application.

Analysis of Duke's application reveals that the omissions pointed out by Simon, actually were omissions. It also reveals, however, that Duke had applied for the position of journeyman electrician, indicating an ability to perform residential work, the simplest type of electrical work, that which is taught in the first year of a 3-year apprenticeship program, according to credited witnesses. Duke's employment history reflects that he worked for known union employers. He would therefore be suspected of still being a union sympathizer.

52. *Joseph Mills*. Simon testified that he reviewed the application of Joseph Mills when it was received July 15 and that it was rejected because it did not reflect any residential work experience.

Analysis of Mill's application reveals that he earned between $17 and 21 per hour at previous employers, clearly union wages, and had graduated from the JATC program. Mills could easily be recognized and identified as a probable union worker.

53. *George Woods*. Finally, Simon reviewed the application of George Woods. He testified that since the application did not reveal any residential work experience he rejected it for that reason. Under Employment History, Woods' application reflects the following entries:

> I.B. Abel
> York, PA - Local 229 IBEW.
>
> Local 24 IBEW
> 2701 W. Patapsco Ave.
> Balt. 21230 Md.

Respondent's brief states, "Mr. Simon was not aware of whether Mr. Woods' prior employers were unionized."

As noted, Jim Jarvis, not alleged as a discriminatee, also filed an application. His application specifically mentioned Local 24 as his present employer and was rejected. He was not contacted.

None of the individuals who filed applications on July 15 were ever contacted, interviewed or hired. When Jarvis called Respondent two weeks later and asked about his application, he was again advised that someone would get back to him.

During the week of July 17–23, two applications were submitted to Respondent, one by Johnny Cupp, the other by Karl Bosman.

Cupp, a member of Local 24, read Respondent's ad in the newspaper and went to its Elkridge office to file an application. He was wearing his Local 24 IBEW baseball cap. There, the receptionist asked him for his driver's license, made a copy of it, then gave him an application. She gave him no instructions on how to fill out the application. He filled it out completely and wrote "shop wages" in the space marked "Salary Desired." Among previous employers, Cupp listed well-known union employers. In describing the type of work in which he had experience, Cupp included residential. He also noted, in his application, having gone through the Local 24 JATC program. Finally, Cupp noted therein that he was a voluntary union organizer. After completing the application, Cupp returned it to the receptionist. She told him that it would remain on file for 2 weeks and that somebody would be contacting him if they were interested. Nobody did. Cupp subsequently was alleged as a discriminatee.

Bosman's application reflected no union affiliations or connections. He was not contacted either.

On July 29, Curtis Sonnier filed an application at Respondent's Forrest Hill office. When he returned the application to the receptionist, it did not reflect any union affiliation or connections. However, he had written "Nego." as the salary desired and had listed only two previous employers. The receptionist handed the application back to Sonnier and noted that Sonnier had written "negotiable" on his application. She advised him that Respondent would not consider looking at it unless he put in a dollar amount. Sonnier then crossed out "Nego" and entered "$13.00 pr hr." He returned the application to the receptionist, still incomplete.

Subsequently, Sonnier was contacted by a member of Respondent's management, interviewed and offered a job. He did not, however, accept the job offer because he was only offered $12 per hour.

In August, four applications were submitted, one of them from an alleged discriminatee, Roderick Easter. Easter's application noted a desired salary of $14 per hour. His employment history was complete but reflected short-term employment with wages ranging from $19.05 to $23.48 per hour. This clearly reflected a union profile. In addition, Easter mentioned on his application that he had graduated from the IBEW apprenticeship program. He noted also that he was qualified in "all phases of electrical work."

Alan Simon testified that he reviewed Easter's application when it was submitted and found it to be "the most unqualified residential application" he had seen. He rejected Easter's application because it did not reflect any residential experience and because Easter's past wages had been too high. Simon expressed annoyance that Easter had worked in Ohio during the past year at a nuclear power plant and on the new Cleveland stadium, choosing to ignore Easter's statement that he was qualified in *all* phases of electrical work and had apparently been involved since 1984, for the previous 9 years, in the electrical trade. Easter was not contacted, interviewed or hired.

The other three applicants who filed applications in August indicated no direct affiliation or connection with any union. Patrick Kyle listed only two previous employers, one of them Respondent. He was contacted, interviewed and hired. David Wagner, a recent graduate of the ABC apprenticeship program, was also contacted, interviewed and hired. Terry Seymour, however, whose final wage at his most recent employer was listed as $24.01 was not contacted.

In September, Respondent received three applications, all three from individuals who indicated no union affiliations or connections. None of the applications were complete, all listing only two or three previous employers, some also missing wage and date information. Nevertheless, all three applicants were contacted, interviewed and hired.

In November, Respondent received two applications neither containing indications of union affiliations or connections. Respondent hired one of the two applicants despite the fact that the applicant hired had listed only two of his previous employers. This applicant did not start on the job until January 5, 1995.

In February 1995[15] two applications were received by Respondent, one from Patricia Gilbert, the other from Allan Heinz. Gilbert's application clearly reflects a union profile. She specifically indicated that her last two employers were IBEW Local 716 in Houston, Texas, meaning that she used Local 716's hiring hall facilities. Gilbert also graduated from Local 716's 4-year apprenticeship school. At her most recent employer, she received $20 per hour, thus indicating another union job. In all, Gilbert's application reflected a 15-year unbroken affiliation with the IBEW. She was not contacted.

Heinz's application indicated no union affiliations or connections. For salary desired, he wrote "negotiable." In the employment history section, he entered just one previous employer. His

[15] All dates are in 1995 unless noted otherwise.

final wage with this employer was $15.31 per hour. However, since Heinz had started at $5 per hour with this employer in 1982 and was still employed there when he filed the application with Respondent, the high hourly wage was not indicative of a union wage. Finally, Heinz noted that he had graduated from the ABC apprenticeship program after 4 years, in 1987. Since he was employed by his one employer during that entire period, it indicates that his employer was ABC (nonunion) affiliated. Although Heinz had filed his application on February 7, he was not interviewed until March 2. He was hired on March 19 despite his failure to meet Respondent's requirements for a complete and acceptable application.

In March, four applications were received. None of the applicants indicated any affiliation or connections with any union. Respondent hired one of them. The one chosen, had failed to indicate any salary desired. However, this applicant had worked for Respondent previously, which was probably a consideration.

G. Application of Respondent's Criteria to Applicants

Analysis of the above-outlined data clearly indicates that virtually without exception, Respondent consistently applied its stated criteria for disregarding applications to all of those applications which specifically indicated an affiliation of the applicant with a union and just as consistently applied these criteria to any individual whose application reflected a probable connection to a union.

On the other hand, analysis of these data also indicates that where an application reflected that the applicant was very probably a nonunion worker, Respondent frequently ignored the criteria it established for automatically rejecting applications. Thus, in Respondent's letter of May 10, 1993, it outlined the criteria used to reject applications. In almost every instance, the employees hired by Respondent, could have been rejected on the basis of the criteria listed in the May 10 letter but were not. Clearly, Respondent used a double standard, depending on whether the applicant was, on the one hand, a union worker or apparent union worker or, on the other hand, a nonunion or apparent nonunion worker. If Respondent intended to use the criteria it professed to be using for lawful purposes, as stated in its May 10 letter, it would have applied these criteria to the applications of prounion and nonunion applicants without distinction. Since it did not, I am free to draw, and do, in fact, draw the inference that the application of these criteria to obvious and suspected union applicants was discriminatorily motivated.

Indeed, although in the abstract, the criteria themselves, may well have a legitimate purpose, as found in *Wireways, Inc.,*[16] their selective applications reflect a more probable ulterior motive or set of motives. Those motives would be to require an applicant to furnish such information as would provide Respondent with a probable union or nonunion profile, upon which to act discriminatorily and to provide it also with a ready-made pretext for rejecting unwanted union applicants.

Thus, a union applicant would more likely write in the sum of $20 per hour and the nonunion applicant $12 per hour in the blank entitled "Salary Desired," simply because those are the wages each would be used to earning during the period relevant to this case for industrial or commercial work. For the same reasons the union applicant would write in $15 to $17 per hour and the nonunion applicant $8 or $9 per hour for residential work. Respondent, regardless of motive, legitimate, or otherwise, would reject the applicant who enters $20 per hour.

[16] 309 NLRB 245 (1992).

Under Respondent's hiring policy, if an applicant writes "negotiable" in the "Salary Desired" space or leaves it blank, the Respondent has a number of alternatives. Because of the large number of applicants, Benfield could, as it is claimed he did in the May 10 letter, take no interest in contacting the applicant to find out what wage rate he desired but reject the application automatically taking no notice of the rest of the application. But, on the contrary, Benfield could, and in actuality did, carefully look over the application to determine if there were other indicia indicating union or nonunion status, then, on that basis, reject any union or suspected union applicants and contact, interview and hire the nonunion applicants. The records so indicate.

The records reflect that Benfield was not simply avoiding unnecessary labor in refusing to contact the union applicants who entered "negotiable" as their desired wage because, if that were his motive, he would have done the same with regard to the nonunion applicants who entered "negotiable." Rather, he used the union applicants entry of "negotiable" as a pretext to avoid considering their application while ignoring the same "unacceptable" entry made by nonunion applicants, contacting and hiring them. I find this discriminatory activity violative of the Act and the statement of position of May 10 misleading and fraudulent.

The applicants who entered "job rate" as the wage they desired were clearly offering to work for whatever Respondent offered to pay them. Respondent could not and did not offer any legitimate defense to its rejection of these offers when submitted by union or suspected union workers.

A second requirement clearly designed by Respondent to obtain a profile of the applicant was its insistence that the applicant supply a record of past wages earned. In its May 10, 1993 statement of position, Respondent misled the Region by speciously offering the explanation that if the individual's recent employment history indicated that he had been earning a wage rate substantially higher than that which was being offered by Respondent, the application would be rejected because Benfield considered it likely that the individual would either not accept a job at the lower rate or would only stay on a short-term basis until he could obtain a job more in keeping with his earlier, higher pay rate. This argument was discussed in *Wireways,* supra, and found to be a legitimate to economic consideration in establishing hiring policies. Indeed, it might be considered as such herein except that Respondent, once again, determined to apply the practice selectively. Thus, where the application otherwise indicated that the individual was a union or probable union applicant, a high previous wage rate would be a sufficient basis for immediate rejection. However, where the application indicated that the individual was clearly a nonunion applicant, the high prior wage rate was ignored and the applicant interviewed and hired, usually at a wage a little less than requested.

A third requirement of applicants designed by Respondent to obtain a profile was its demand that the individual include in his application, the dates the applicant was employed at each of his previous four employers. In its May 10, 1993 statement of position, Respondent advised the Region that its purpose in requiring this information and the reason for including it among the criteria used in determining whether or not to reject an applicant was because Benfield felt that individuals who had short-term service, on average, with their last several employees, i.e., less than 6 months, were considered to be unlikely to stay for very long with the Company, and therefore, a risky choice.

Accepting Respondent's position at face value, it would seem reasonable. However, the above-described records clearly show

that Respondent rejected every application indicating a union affiliation or suspected connection, without exception, and without investigation, where the employment history reflected short-term jobs or a lack of information concerning dates of employment, but contacted a large number of nonunion applicants whose applications reflected a number of short-term jobs or left out information on this subject, particularly if their applications reflected connections with the ABC or its apprenticeship program. This fact too, reflects adversely on the credibility of Respondent's May 10 position letter. I find that the use of the short-term job basis for rejecting union or suspected union applicants was fraudulent. The rejection of these applicants without consideration, based on their having held a number of short-term jobs was clearly pretextual in light of the fact that Respondent contacted, interviewed and hired nonunion applicants with the same type of record.

Benfield has been in the electrical construction industry for 25 years. From the testimony of the various witnesses, it is clear that those engaged in business in that industry, for a lot less time than 25 years, know which of the contractors are union and which of them are not. They know what the going union and nonunion wage rates for industrial, commercial and residential work are. Moreover, Benfield and other experienced contractors know that virtually all construction unions including the IBEW maintain a hiring hall and that electricians are referred out frequently several times a year to construction jobs lasting a few days, weeks, or months, after completion of which, they return and are placed back on the referral list until their names come back to the top of the list, at which time the process is repeated. This process manifests itself in each union electrician's employment record, which reflects a series of short-term jobs. This short-term job employment record had nothing to do with determining reliability, Respondent's May 10 statement of position to the contrary, notwithstanding. Rather, it was part of Respondent's overall effort to construct a profile of each applicant's union or nonunion status, upon which Respondent could base its hiring decision.

Respondent's informational requirements on its application with its demand for completeness and its May 10 statement of position outlining its criteria for automatically rejecting applications can be considered legitimate only in the absence of discriminatory processing. Once Respondent determined to reject all of the applications of union or suspected union applicants because of the information included or left out of the application while receiving and processing the applications of nonunion applicants containing or lacking the same information, the process ceases to be legitimate and becomes discriminatory.

Respondent engaged in a discriminatorily motivated hiring policy and practice and sought to hide its policy by its fraudulent May 10 position paper in which it claimed to be pursuing legitimate economic objectives. Inasmuch as the information demanded of applicants could arguably be used for legitimate economic purposes and an applicant who furnished or failed to furnish the requested information could be rejected for lawful reasons, the Regional Director, having no evidence to the contrary or evidence of antiunion animus at the time, was completely justified in accepting the Respondent's explanation concerning its hiring policy, contained in its May 10, 1993 position letter and dismissing the charge based on Respondent's explanation. However, when previous employees of Respondent came forward much later offering evidentiary testimony indicating that the explanation contained in Respondent's May 10 position letter was untrue and fraudulently offered for the purpose of misleading the Regional Director and hiding the real reasons for rejecting the applications of union and suspected union applicants, the Regional Director was likewise justified in revoking his earlier dismissal and issuing the complaint which in turn would enable him to issue the subpoenas necessary to acquire Respondent's records, so important to proving the Government's case.

In addition to the criteria for rejection used to discriminate against apparent union applicants, discussed immediately above, Respondent used several others as pretexts for rejection of union applicants. These included generally incomplete applications, failure to supply driver's licenses and stale applications. As in the case of the criteria already discussed at length, these criteria for rejection were strictly enforced against union and suspected union applicants but not enforced against applicants free of union affiliation or connection, clearly reflecting the pretextual nature of the applications of these criteria as well.

Conclusions

From the testimony of the General Counsel's witnesses and the exhaustive examination and analysis of the records fully described above, I conclude:

1. The Region was justified, when it relied upon Respondent's May 10, 1993 statement of position and on the lack of evidence to the contrary, in initially dismissing the charge in Case 5–CA–23367.

2. The Region was justified upon becoming aware that Respondent had fraudulently concealed its policy of not considering for hire and not hiring individuals who were known or suspected union members and supporters, in revoking its dismissal of the charge in Case 5–CA–23367 and subsequently issuing complaint.[17]

3. Respondent maintained a policy and practice of not considering for hire and not hiring known or suspected union members and supporters and pursuant to this policy and practice, failed and refused to consider for employment and failed and refused to hire the individuals named in the instant consolidated cases in violation of Section 8(a)(1) and (3) of the Act.[18]

IV. THE EFFECT OF THE UNFAIR LABORPRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with its operation described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. REMEDY[19]

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3), of the Act, I shall recommend that it be ordered to cease and desist therefrom and take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, as I have found that certain employees were discriminatorily denied employment, I shall recommend that Respondent be required to offer them immediate employment to the positions which next became available after their applications were filed or to substantially equivalent positions at other nearby projects. In addition, I shall also recommend that Respondent be ordered to make them whole for any loss of earnings and other benefits they may have suffered as a result of Respondent's unlawful discrimination against them, from the date

[17] *Brown & Sharpe Mfg Co*., 312 NLRB 444 (1993).
[18] *Fluor Daniel, Inc.,* 304 NLRB 970 (1991).
[19] See the remedy in *Fluor Daniel, Inc.,* supra.

they applied for employment, to the date that the Respondent makes them a valid offer of employment. Such amounts shall be computed in the manner prescribed in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), and shall be reduced by net interim earnings, with interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, it is recommended that this Order be subject to resolution at the compliance stage in accordance with *Dean General Contractors*, 285 NLRB 573 (1987).

CONCLUSIONS OF LAW

1. Respondent is, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining a policy and practice of not considering for hire and not hiring known or suspected union members and supporters, Respondent has engaged in, and is engaging in activities violative of Section 8(a)(1) and (3) of the Act.

4. By failing and refusing to consider for employment and failing and refusing to hire the individuals listed in the appendix, pursuant to the policy and practice described above in paragraph 3, Respondent has engaged in, and is engaging in activities violative of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]